

**No. 23-3016**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

LYLE RIKIO CUMMINGS,

Defendant-Appellant.

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On Appeal From the United States District Court  
for the District of Hawaii  
Case No. 1:22-cr-00023-DKW

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**APPELLEE'S SUPPLEMENTAL EXCERTPS OF RECORD  
VOLUME 2 of 2**

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CLARE E. CONNORS  
*United States Attorney  
District of Hawaii*

REBECCA A. PERLMUTTER  
*Assistant U.S. Attorney*

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1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF HAWAII  
3 UNITED STATES OF AMERICA, ) CRIMINAL NO. 22-00023-DKW  
4 Plaintiff, ) Honolulu, Hawaii  
5 vs. ) June 14, 2023  
6 LYLE RIKIO CUMMINGS, )  
7 Defendant. )  
8 \_\_\_\_\_ )  
9

10 TRANSCRIPT OF JURY TRIAL (DAY 5)  
11 BEFORE THE HONORABLE DERRICK K. WATSON,  
12 CHIEF UNITED STATES DISTRICT COURT JUDGE

13 APPEARANCES:

14 For the Plaintiff: REBECCA PERLMUTTER, ESQ.  
15 CHRISTINE OLSON, ESQ.  
16 Office of the United States Attorney  
17 PJKK Federal Building  
300 Ala Moana Boulevard, Suite 6100  
Honolulu, Hawaii 96850

18 For the Defendant: JOSEPH R. MOTTL, III, ESQ.  
19 2009 Makiki Street #C  
Honolulu, HI 96822

20  
21 Official Court Reporter: Gloria T. Bediamol, RPR RMR CRR FCRR  
22 United States District Court  
23 300 Ala Moana Boulevard  
Honolulu, Hawaii 96850

24 Proceedings recorded by machine shorthand, transcript produced  
25 with computer-aided transcription (CAT).



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1 June 14, 2023 8:42 a.m.

08:42AM 2 THE CLERK: Criminal Number 22-00023-DKW, United

08:42AM 3 States of America versus Lyle R. Cummings.

08:42AM 4 This matter has been set for jury trial, day five.

08:42AM 5 Counsel, please make your appearances for the record.

08:42AM 6 MS. OLSON: Good morning. AUSA Christine Olson and

08:42AM 7 AUSA Rebecca Perlmutter for the United States. We also have at

08:42AM 8 counsel table paralegal Rae Ann Unten and right behind us HSI

08:42AM 9 Special Agent Murray Acosta.

08:42AM 10 THE COURT: Good morning.

08:42AM 11 MR. MOTTL: Your Honor, good morning. Joe Mottl

08:42AM 12 attorney for Lyle Cummings. Mr. Cummings is present.

08:42AM 13 THE COURT: Okay. Good morning to both of you as

08:42AM 14 well.

08:42AM 15 I've got to get used to the good morning, right?

08:42AM 16 We've -- we've been getting together in the afternoons up to

08:42AM 17 this point. So good morning -- you may be seated. Good

08:42AM 18 morning to the 14 persons on our jury. As we begin day five, I

08:42AM 19 will reorient you to where we were at the end of our trial day

08:42AM 20 yesterday. Detective Katayama had just testified on direct

08:43AM 21 examination and we were just about ready to begin Mr. Mottl's

08:43AM 22 cross-examination when we ran out of time. So let's do that

08:43AM 23 now.

08:43AM 24 Mr. Mottl?

08:43AM 25 MR. MOTTL: Yes. Thank you, Your Honor.

08:43AM 1 GREGG KATAYAMA,

08:43AM 2 (Resumed the stand.)

08:43AM 3 CROSS-EXAMINATION

08:43AM 4 BY MR. MOTTL:

08:43AM 5 Q Detective, good morning.

08:43AM 6 A Good morning.

08:43AM 7 Q I just have a few questions. You carried out many  
08:43AM 8 searches as you described in this case?

08:43AM 9 A Yes.

08:43AM 10 Q Is there a method when you're working with someone else,  
08:43AM 11 someone was assisting you and photographs were being taken? Is  
08:43AM 12 there any standard method used or is it -- do you just sort of  
08:43AM 13 look and feel and uncover things, disclose things and then  
08:43AM 14 photograph? Or is someone photographing you as you do your  
08:43AM 15 investigation?

08:43AM 16 A Well, I like to do a systematic search. So once somebody  
08:44AM 17 discovers something, I'll take pictures of it to -- in its  
08:44AM 18 natural state as how we found it then take additional pictures  
08:44AM 19 as needed.

08:44AM 20 Q It sounds as if you were taking -- did you also take  
08:44AM 21 pictures or were you the photographer?

08:44AM 22 A Yes. So I was in charge of taking pictures and also was  
08:44AM 23 in charge of documenting the exhibit of what was found.

08:44AM 24 Q Now, the actual individual searching, was it just this --  
08:44AM 25 your one helper there or were there two people searching the

08:44AM 1 car or the truck?

08:44AM 2 A The other two officers were conducting the search.

08:44AM 3 Q And if they discovered something, they'd notify you and  
08:44AM 4 you would come over and photograph it?

08:44AM 5 A Yes.

08:44AM 6 Q As they found it, okay. All right. If -- in terms of the  
08:44AM 7 standard procedures, if an item is found that is considered  
08:45AM 8 possible evidence, and something is on top of it, is -- you as  
08:45AM 9 photographer, would you photograph it in that order, that is as  
08:45AM 10 it was found, or might it be inverted to show what was  
08:45AM 11 underneath and then that item marked and removed? Might it be  
08:45AM 12 other way -- either way?

08:45AM 13 A Generally, no. Like in the instance of the black bag we  
08:45AM 14 found, we would document that first. And then once that was  
08:45AM 15 properly documented, we'd continue to search and like the  
08:45AM 16 iPhone box is underneath then the search would continue.

08:45AM 17 MR. MOTTL: For that. I see. All right. No further  
08:45AM 18 questions. Thank you.

08:45AM 19 THE COURT: Redirect?

08:45AM 20 MS. OLSON: No redirect, thank you.

08:45AM 21 THE COURT: All right. Detective, you may step down.  
08:45AM 22 Thank you.

08:45AM 23 THE WITNESS: Thank you.

08:45AM 24 THE COURT: Ms. Olson, your next witness, please.

08:46AM 25 MS. PERLMUTTER: Your Honor, the government calls



08:46AM 1 Brandi Kaoni.

08:46AM 2 THE CLERK: Please raise your right hand.

08:46AM 3 BRANDI KAONI,

08:46AM 4 called as a witness, having been first duly sworn, was examined

08:46AM 5 and testified as follows:

08:46AM 6 THE CLERK: Please state your full name and spell your

08:46AM 7 last name for the record.

08:46AM 8 THE WITNESS: Brandi Kaoni, K-A-O-N-I.

08:47AM 9 DIRECT EXAMINATION

08:47AM 10 BY MS. PERLMUTTER:

08:47AM 11 Q Good morning, Ms. Kaoni.

08:47AM 12 A Good morning.

08:47AM 13 Q Would you please introduce yourself to the jury by

08:47AM 14 explaining where you're currently employed?

08:47AM 15 A I am a criminalist at the Maui Police Department.

08:47AM 16 Q And what's a criminalist?

08:47AM 17 A A criminalist is someone who uses scientific methods to

08:47AM 18 analyze physical evidence for legal purposes.

08:47AM 19 Q Is part of your role to also provide testimony like you're

08:47AM 20 doing today?

08:47AM 21 A Yes.

08:47AM 22 Q And where do you work in the Maui Police Department?

08:47AM 23 A So I work in the Maui Police Department crime laboratory

08:47AM 24 also known as the drug analysis unit.

08:47AM 25 Q Who else works in that unit with you?

08:47AM 1 A We have myself and one other criminalist.

08:47AM 2 Q How long have you been a criminalist with the Maui Police  
08:47AM 3 Department?

08:47AM 4 A For eight years.

08:48AM 5 Q Do you have other jobs before that?

08:48AM 6 A So I worked mostly as a graduate research assistant. I  
08:48AM 7 had two positions as a graduate research assistant.

08:48AM 8 Q And you mentioned you were a graduate research assistant  
08:48AM 9 so that goes to my next question. Could you explain a little  
08:48AM 10 bit about your education?

08:48AM 11 A Yes. So I have a bachelor of science -- actually, a dual  
08:48AM 12 bachelor of science in biochemistry and molecular biology from  
08:48AM 13 the University of Denver, and I have a master of science in  
08:48AM 14 biomedical basic sciences from the University of Colorado  
08:48AM 15 Denver Anschutz Medical Campus.

08:48AM 16 Q As your role as the criminalist for the Maui Police  
08:48AM 17 Department, does that require specialized training?

08:48AM 18 A Yes.

08:48AM 19 Q Could you describe I guess from the beginning of when you  
08:48AM 20 first got the job what type of training that you've received?

08:48AM 21 A Yes. So when I started in this position, I received  
08:49AM 22 formal training in drug analysis from the Honolulu Police  
08:49AM 23 Department scientific investigation section drug in-house unit.  
08:49AM 24 And since then or that was about seven months of formal  
08:49AM 25 training, structured like a college course you had written,



08:49AM 1 practicals, oral exams, things like that. So that was about  
08:49AM 2 seven months.

08:49AM 3 Q Was that seven months specifically focused on analyzing  
08:49AM 4 drugs?

08:49AM 5 A Yes.

08:49AM 6 Q Is another word for that controlled substances?

08:49AM 7 A Yes.

08:49AM 8 Q What would you describe as a controlled substance?

08:49AM 9 A So a controlled substance is something that has been  
08:49AM 10 deemed illegal to possess by state or federal law.

08:49AM 11 Q Since that seven months when you first started at MPD,  
08:49AM 12 have you done other trainings?

08:49AM 13 A Yes. I participate in continuing education, so pretty  
08:50AM 14 much every month since I finished training I've had some sort  
08:50AM 15 of supplemental training either on techniques, on drug trends  
08:50AM 16 or I've also had specialized training directly from  
08:50AM 17 manufacturer of our instruments, so for about eight years now  
08:50AM 18 I've had just continuing education.

08:50AM 19 Q When you say that you had direct training regarding your  
08:50AM 20 instruments, could you explain a bit what you mean by  
08:50AM 21 instruments?

08:50AM 22 A Yes. So I mentioned we use scientific methods to analyze  
08:50AM 23 evidence. To analyze the evidence, we use highly sophisticated  
08:50AM 24 scientific instruments or machines, if you will. So the  
08:50AM 25 manufacturer, the people who make all of the machines, we --

08:50AM 1 I've received training from all of them directly.

08:50AM 2 Q Do you have certifications in the area of drug analysis?

08:51AM 3 A Yes. So I am a board certified drug analyst with the

08:51AM 4 American Board of Criminalistics.

08:51AM 5 Q What did that mean?

08:51AM 6 A So certification, it's a voluntary process and it

08:51AM 7 demonstrates that an analyst has the professional knowledge,

08:51AM 8 skills and abilities that are required to do the job. So I

08:51AM 9 have the professional skills to be a drug analyst. Excuse me.

08:51AM 10 Q Do you have to do any sort of proficiency or competency

08:51AM 11 testing as part of your job?

08:51AM 12 A Yes. So each year we are required to complete proficiency

08:51AM 13 testing. And that is when we received blind samples and we

08:51AM 14 have to analyze them according to our laboratory SOPs or

08:51AM 15 standard operating procedures, and we -- we test the unknown

08:52AM 16 samples, generate a report, and we upload that result to the

08:52AM 17 proficiency test provider. And if our results are in consensus

08:52AM 18 with the nation or national consensus result, then we have

08:52AM 19 passed that proficiency test.

08:52AM 20 Q Have you passed your proficiency tests?

08:52AM 21 A Yes.

08:52AM 22 Q Are there any other quality checks on the work that you do

08:52AM 23 in the drug analysis unit?

08:52AM 24 A Yes. So before we use any instrument for testing, we are

08:52AM 25 required to demonstrate that it is working properly. So we

08:52AM 1 have daily checks of all the instruments that we use for case  
08:52AM 2 work.

08:52AM 3 Q When you come up with a final report, is that a fair way  
08:52AM 4 to categorize it?

08:52AM 5 A Yes.

08:52AM 6 Q Does that report get checked by anyone?

08:52AM 7 A Yes. So our -- our official laboratory reports get  
08:53AM 8 reviewed by another technically competent drug analyst and we  
08:53AM 9 call this a technical case review. So that's another quality  
08:53AM 10 check that we -- that we perform before issuing our final  
08:53AM 11 report.

08:53AM 12 Q In your eight years at the Maui Police Department, can you  
08:53AM 13 approximate how many analyses you've done of controlled  
08:53AM 14 substances?

08:53AM 15 A I've done about 3,500 analyses.

08:53AM 16 Q And have you in that category tested substances that  
08:53AM 17 contain cocaine?

08:53AM 18 A Yes.

08:53AM 19 Q What about cocaine base?

08:53AM 20 A Yes.

08:53AM 21 Q Do you have an approximate number of how many of those  
08:53AM 22 tests that you've done?

08:53AM 23 A I've identified cocaine about 115 times.

08:53AM 24 Q What about cocaine base?

08:53AM 25 A That 115 includes cocaine and cocaine base.

08:54AM 1 Q Are you familiar with testing what's known as THC?

08:54AM 2 A Yes.

08:54AM 3 Q What does THC stand for?

08:54AM 4 A THC is also or it stands for delta-9 tetrahydrocannabinol

08:54AM 5 and that is the psychoactive ingredient found in marijuana.

08:54AM 6 Q And approximately how many analyses have you done for THC?

08:54AM 7 A So I've identified THC 64 times and I've identified

08:54AM 8 marijuana over 300 times.

08:54AM 9 Q Have you previously testified as an expert related to drug

08:54AM 10 analysis?

08:54AM 11 A Yes.

08:54AM 12 Q And how many times?

08:54AM 13 A Seven times.

08:54AM 14 Q And for what type of courts have you done that testimony

08:54AM 15 for?

08:54AM 16 A I provided testimony in the courts in the State of Hawaii.

08:54AM 17 MS. PERLMUTTER: Your Honor, at this time, I'd move to

08:55AM 18 offer Ms. Kaoni as an expert in drug analysis and

08:55AM 19 identification pursuant to the Federal Rules of Evidence

08:55AM 20 specifically Rule 702.

08:55AM 21 THE COURT: Mr. Mottl, any objection?

08:55AM 22 MR. MOTTL: No objection, Your Honor.

08:55AM 23 THE COURT: All right. Without objection, Ms. Kaoni

08:55AM 24 may testify as an expert within the meaning of Federal Rule of

08:55AM 25 Evidence 702 in the field of drug analysis and identification.



08:55AM 1 You may proceed.

08:55AM 2 MS. PERLMUTTER: Thank you.

08:55AM 3 BY MS. PERLMUTTER:

08:55AM 4 Q I'd like to turn to the purpose of your testimony here  
08:55AM 5 today. How were you involved in the investigation involving  
08:55AM 6 Lyle Cummings?

08:55AM 7 A I received a request to test suspected controlled  
08:55AM 8 substances seized in -- in this particular case.

08:55AM 9 Q After you received that request, what steps did you take  
08:55AM 10 in order to start the process?

08:55AM 11 A So the process starts by the laboratory receiving a work  
08:55AM 12 request that details the case and item numbers that the  
08:56AM 13 requester wants tested. So I then take that request, I email  
08:56AM 14 it to our evidence custodians who are in charge of I guess  
08:56AM 15 organizing and maintaining all evidence items for the police  
08:56AM 16 station.

08:56AM 17 So once they have the items ready, I go to the  
08:56AM 18 evidence room. I check that each item has the report number  
08:56AM 19 and the item number listed on the work request that I receive.  
08:56AM 20 And after I've confirmed all of those checks, I then check each  
08:56AM 21 item for signs of tampering. And when all of -- when the  
08:56AM 22 evidence is -- I guess when all the checks are completed, I  
08:56AM 23 then sign a chain of custody and that -- that details that I  
08:56AM 24 have taken possession of those items.

08:56AM 25 Q For the items that you tested in this case, were there any

08:57AM 1 signs of tampering when you obtained them?

08:57AM 2 A No.

08:57AM 3 MS. PERLMUTTER: All right. Your Honor, at this time

08:57AM 4 I'd like to publish Exhibit 14A, page two. It's already in

08:57AM 5 evidence.

08:57AM 6 THE COURT: Yes, you may.

08:57AM 7 MR. MOTT: No objection, Your Honor.

08:57AM 8 MS. PERLMUTTER: Thank you.

08:57AM 9 Page two, please.

08:57AM 10 BY MS. PERLMUTTER:

08:57AM 11 Q Are you familiar with this form?

08:57AM 12 A Yes.

08:57AM 13 Q And do you see your signature on this form anywhere?

08:57AM 14 A Yes.

08:57AM 15 Q Okay. Could you describe for the jury where your

08:57AM 16 signature is and also the purpose?

08:57AM 17 A Okay. So if you look towards the middle of -- of the

08:57AM 18 form, it says item number, received from and received by

08:57AM 19 signature. So in that first line, I have received by and

08:57AM 20 that's my signature. And the date is June 25, 2021, at 11:51 I

08:58AM 21 received this item.

08:58AM 22 Q Is your signature on there a second time?

08:58AM 23 A Yes. On the line directly below, you can see my signature

08:58AM 24 again under received from and that details when I returned the

08:58AM 25 evidence back to the evidence room.

08:58AM 1 Q And on what date?

08:58AM 2 A July 13, 2021, at 10:12.

08:58AM 3 Q What happened with the items that you obtained custody of  
08:58AM 4 during that period from June 25th to July 13th?

08:58AM 5 A So those items that I received, they were taken back to  
08:58AM 6 the crime laboratory where I stored them until I was ready to  
08:58AM 7 test them.

08:58AM 8 Q Are they kept secure in your crime lab?

08:58AM 9 A Yes.

08:58AM 10 Q How are they secured?

08:58AM 11 A They are secured in personal evidence lockers in the crime  
08:58AM 12 laboratory in which only me and another criminalist have access  
08:59AM 13 to. And those lockers are in our secure laboratory in which,  
08:59AM 14 again, only me and another criminalist have access to.

08:59AM 15 Q When you're finished testing the items, how do you  
08:59AM 16 resecure them?

08:59AM 17 A So when I finish my testing, I will return them to the  
08:59AM 18 original packaging and then seal the packaging with green  
08:59AM 19 evidence tape. That -- that tape has my initials and date on  
08:59AM 20 it as well.

08:59AM 21 Q The exhibit in front of you 14A, page two, the property in  
08:59AM 22 evidence voucher, do you see the evidence custodian that you  
08:59AM 23 were referring to on this form?

08:59AM 24 A Yes.

08:59AM 25 Q And could you tell the jury where you see that person's



08:59AM 1 name?

08:59AM 2 A So on that same line, received from, I received it from

08:59AM 3 Janice Aquino. And on the next line below, I returned it to

09:00AM 4 Janice Aquino received by. She sign under received by.

09:00AM 5 Q Do you see her writing anywhere else on this form?

09:00AM 6 A Yes. If you look a little bit up, there's a table. It

09:00AM 7 says property control number. There is the property control

09:00AM 8 number and directly below that there is some handwritten

09:00AM 9 subitemization so that is a subitemization I designated for

09:00AM 10 each item in this particular package and those are my initials.

09:00AM 11 Q If you could turn to page four, please. This is another

09:00AM 12 property in evidence form. Do you see your name here as well?

09:00AM 13 A Yes.

09:00AM 14 Q The procedures that you just discussed regarding obtaining

09:00AM 15 the evidence and securing it, is that similarly applied to the

09:00AM 16 items pertaining to this form?

09:00AM 17 A Yes.

09:00AM 18 Q And is that true for all of the items that you obtained

09:01AM 19 for purposes of your testing?

09:01AM 20 A Yes.

09:01AM 21 Q So does your signature appear on all the property in

09:01AM 22 evidence forms?

09:01AM 23 A Yes.

09:01AM 24 Q And again, just to point out in the property control

09:01AM 25 number, do you see your writing there?

09:01AM 1 A Yes. Again, you can see the subitemization with my  
09:01AM 2 initials next to it.

09:01AM 3 MS. PERLMUTTER: You can take this exhibit off.

09:01AM 4 At this time, Your Honor, I'd ask to -- permission to  
09:01AM 5 approach the witness with Exhibit 12.

09:01AM 6 THE COURT: Yes, you may.

09:01AM 7 MS. PERLMUTTER: Thank you.

09:01AM 8 BY MS. PERLMUTTER:

09:01AM 9 Q Please take a moment to inspect Exhibit 12, and you may  
09:01AM 10 want to take it out of the outer packaging sleeve but it's  
09:02AM 11 sealed in its inner packaging. Do you recognize Exhibit 12?

09:02AM 12 A Yes.

09:02AM 13 Q What are the items inside there?

09:02AM 14 A So in this exhibit, I see items that I have tested  
09:02AM 15 regarding this particular case. I see individual baggies with  
09:02AM 16 my handwriting and initials. And I also see two packages that  
09:02AM 17 are sealed with green evidence tape that say MPD crime lab with  
09:02AM 18 my initials on it as well.

09:02AM 19 Q Are these same items related to the property in evidence  
09:02AM 20 forms in Exhibit 14A that we just looked at?

09:03AM 21 A Yes.

09:03AM 22 Q Are these also the same items that you actually tested for  
09:03AM 23 purposes of your drug analysis report?

09:03AM 24 A Yes.

09:03AM 25 Q Do you see the cocaine that you tested?

09:03AM 1 A Yes.

09:03AM 2 Q Do you see the cocaine base that you tested?

09:03AM 3 A Yes.

09:03AM 4 Q How are you able to recognize that those were the items  
09:03AM 5 that you tested?

09:03AM 6 A So again, each item that I test will have my handwriting  
09:03AM 7 with the report number, the item number, if applicable a  
09:03AM 8 weight, and my initials on it and I can see that on multiple  
09:03AM 9 bags and on the evidence tape seal.

09:03AM 10 Q Why it is that you put your writing on there?

09:03AM 11 A So that helps us organize sometimes when you have multiple  
09:03AM 12 bags related to one item number, you can't really tell them  
09:03AM 13 apart so we subitemize. And to ensure that everything is  
09:04AM 14 related to that specific item, we write it directly -- the  
09:04AM 15 subitemization directly on the packaging.

09:04AM 16 Q Now, I don't -- I don't want to you get too close but --  
09:04AM 17 and I know the jury won't know this right from where you're  
09:04AM 18 sitting but is there some type of odor emanating from that bag?

09:04AM 19 A There is -- there's an odor. It smells a little like  
09:04AM 20 paint thinner.

09:04AM 21 Q Why?

09:04AM 22 A That's -- that's a smell that we commonly smell when we  
09:04AM 23 have large amounts of cocaine.

09:04AM 24 Q If -- when you inspect those items today, are those items  
09:04AM 25 in substantially the same condition as the crack, excuse me,

09:04AM 1 the cocaine base and the cocaine when you tested them in your  
09:04AM 2 drug lab?

09:04AM 3 A So the items in the larger heat seal with the green  
09:04AM 4 evidence tape, those look intact, but I do see the outer manila  
09:05AM 5 packaging. There was an outer manila envelope that contained  
09:05AM 6 some of these loose baggies. I don't see that manila envelope.  
09:05AM 7 That's the only thing I done see.

09:05AM 8 Q So the outer packaging, that manila envelope, is not  
09:05AM 9 included in there?

09:05AM 10 A Yes.

09:05AM 11 Q But the items themselves, the cocaine and the cocaine  
09:05AM 12 base, are those in substantially the same condition?

09:05AM 13 A Yes. I see all of those within this bag here, yes. So  
09:05AM 14 all the contents in the manila envelope are present.

09:05AM 15 MS. PERLMUTTER: Your Honor, permission to take the  
09:05AM 16 exhibit from the witness at this time.

09:05AM 17 THE COURT: Yes, please do so.

09:05AM 18 BY MS. PERLMUTTER:

09:05AM 19 Q Now, we mentioned your findings here. Did you make your  
09:06AM 20 findings in a written report?

09:06AM 21 A Yes.

09:06AM 22 Q And is that written report something that you prepare with  
09:06AM 23 every drug analysis that you do?

09:06AM 24 A Yes.

09:06AM 25 Q And does that report reliably indicate the conclusions



09:06AM 1 that you came to after you did your analyses?

09:06AM 2 A Yes.

09:06AM 3 Q And did you do a report in this case?

09:06AM 4 A Yes.

09:06AM 5 MS. PERLMUTTER: Your Honor, at this time, I'd like to  
09:06AM 6 publish Exhibit 16 which I believe has already been admitted  
09:06AM 7 into evidence.

09:06AM 8 THE COURT: It has and you may.

09:07AM 9 MS. PERLMUTTER: Can you give us a minute? I think we  
09:07AM 10 can publish it if the Court allows.

09:07AM 11 BY MS. PERLMUTTER:

09:07AM 12 Q Okay. So is this the report that you prepared for the  
09:07AM 13 items that you tested in this case?

09:07AM 14 A Yes.

09:07AM 15 Q Could you walk the jury through -- let's start with the  
09:07AM 16 upper portion of the report before you get into the specific  
09:07AM 17 items.

09:07AM 18 MS. PERLMUTTER: And, Ms. Unten, if you could blow  
09:07AM 19 that up, the upper portion, please.

09:07AM 20 BY MS. PERLMUTTER:

09:08AM 21 Q What information do you put on the top of your report to  
09:08AM 22 identify it?

09:08AM 23 A Okay. So first, oh, excuse me. First off, this is the  
09:08AM 24 official laboratory report and it details the MPD case number,  
09:08AM 25 the offense, and the requester so the person requesting the

09:08AM 1 drug analysis. It also details who and when I received  
09:08AM 2 evidence from. So evidence custodian Janice Aquino, and then I  
09:08AM 3 received it on June 25, 2021. And below that it details the  
09:08AM 4 date that analysis started and the date that it finished or it  
09:08AM 5 was completed.

09:08AM 6 Q And after the preliminary information in the top portion  
09:08AM 7 of that report, there is a section call packaging. Why do you  
09:08AM 8 include that section?

09:08AM 9 A So this helps us inventory all of our items and it helps  
09:08AM 10 us document what each item or how they were packaging, the  
09:09AM 11 conditions they were received. And in this case, there were no  
09:09AM 12 signs of tampering, so I've documented that all the seals I  
09:09AM 13 received were intact.

09:09AM 14 Q If you could walk the jury through -- actually, before  
09:09AM 15 that we already have this pulled up.

09:09AM 16 After the packaging, you have a section called  
09:09AM 17 evidence description and what's the significance of that?

09:09AM 18 A So again, packaging is like the outer bag, and the  
09:09AM 19 evidence description portion of this report details each item  
09:09AM 20 that's within the packaging. So each baggy is listed and a  
09:09AM 21 description of -- of each item is listed in this section.

09:09AM 22 Q So this is before you do any actual testing?

09:09AM 23 A Yes. So before we start any testing, we -- again, we  
09:09AM 24 inventory. We check the report number, the item number and  
09:09AM 25 then we take it a step further by describing each item.

09:10AM 1 MS. PERLMUTTER: Okay. If you can zoom back up.

09:10AM 2 Thank you.

09:10AM 3 BY MS. PERLMUTTER:

09:10AM 4 Q If you could walk the jury -- now, let's go to page two --  
09:10AM 5 through your testing procedures in this case.

09:10AM 6 A Okay. Okay. So in this section, we have the results and  
09:10AM 7 conclusions. So each item is listed and it has the final -- I  
09:10AM 8 guess the final conclusion about what the substance is, the  
09:10AM 9 weight that was obtained for that particular substance, and  
09:10AM 10 then the test and techniques. So for each of these items, I  
09:10AM 11 performed a presumptive color test followed by --

09:10AM 12 Q Let me stop you, Ms. Kaoni. Let's go -- let's go back so  
09:10AM 13 that we take each in -- in part. What was the first type of  
09:10AM 14 test that you did with the items?

09:11AM 15 A Okay. So the first thing we do is we obtain a weight of  
09:11AM 16 the substance.

09:11AM 17 Q And why is it significant to weigh each item?

09:11AM 18 A So the weight of the substance helps the requester usually  
09:11AM 19 an officer, in this case detective, determine the charge so the  
09:11AM 20 charge for possession, if you will. There are weight  
09:11AM 21 thresholds that we need to meet. So it's important that we  
09:11AM 22 obtain an accurate weight of each substance so we know how much  
09:11AM 23 in total was in possession.

09:11AM 24 Q Is this weight -- I'm going to use these terms -- and I  
09:11AM 25 hope you can explain them to the jury -- a gross or a net



09:11AM 1 weight?

09:11AM 2 A So it's a net weight. So it's the weight of the substance  
09:11AM 3 without any other packaging.

09:11AM 4 Q Okay. So, for example, when you were looking at

09:12AM 5 Exhibit 12, the physical drugs, some of those drugs were in

09:12AM 6 plastic bags. How would you have weighed that for the drugs

09:12AM 7 that were in those plastic bags?

09:12AM 8 A Okay. So to obtain a net weight, I'll take the bag and I

09:12AM 9 will scrape out all of the powder or substance into a weigh

09:12AM 10 boat and then I'll put that weigh boat onto our digital

09:12AM 11 balance. And I will obtain the weight that is displayed and

09:12AM 12 record that in my notes and that is the net weight. The weight

09:12AM 13 without any packaging.

09:12AM 14 Q Okay. So I want to talk a little bit about how you listed

09:12AM 15 the weight in your report so -- so the jury can understand.

09:12AM 16 Let's go to the first result and conclusion.

09:12AM 17 MS. PERLMUTTER: If we can blow that up.

09:12AM 18 BY MS. PERLMUTTER:

09:12AM 19 Q So for this item, the net -- what was net weight and why

09:12AM 20 is there something after that?

09:13AM 21 A Okay. So the weight I obtained was 0.861 grams and there

09:13AM 22 is a plus or minus .003 grams. And that plus or minus .003,

09:13AM 23 it's called the uncertainty of measurement. So it's a value

09:13AM 24 that we determine in the laboratory that accounts for all the

09:13AM 25 variability in our weighing process so it accounts for operator

09:13AM 1 error, the error -- or variability on the balance itself,  
09:13AM 2 environmental conditions, so you can think of it also as a plus  
09:13AM 3 or minus window in which the actual weight falls.

09:13AM 4 Q If you can turn to page four, please. And the bottom half  
09:13AM 5 of the screen, please.

09:14AM 6 Did you determine a total weight of the various items  
09:14AM 7 that you tested?

09:14AM 8 A Yes. So I obtained a total weight of all the cocaine and  
09:14AM 9 all of the cocaine base including the total weight of all items  
09:14AM 10 containing delta-9 tetrahydrocannabinol.

09:14AM 11 Q Okay. And is that included right above the measury --  
09:14AM 12 measurement uncertainty statement?

09:14AM 13 A Yes.

09:14AM 14 MS. PERLMUTTER: If you can zoom out, please.

09:14AM 15 BY MS. PERLMUTTER:

09:14AM 16 Q Now, as we move to the next portion of your testing,  
09:14AM 17 perhaps it would be useful to just look at one item.  
09:14AM 18 Specifically, let's take that first item that's included on  
09:14AM 19 this page. So we just talked about the weight. What is your  
09:14AM 20 next step?

09:14AM 21 A Okay. So we test one item at a time, so I'll take one  
09:15AM 22 baggy, obtain the weight and then I'll proceed on performing a  
09:15AM 23 presumptive test. So the presumptive test gives us an  
09:15AM 24 indication of what the substance could be. So in this case for  
09:15AM 25 this item, I utilized a color test.

09:15AM 1 Q And what does that mean?

09:15AM 2 A So a color test is performed on a ceramic spot plate so

09:15AM 3 like a little rectangular plate with individual wells on it.

09:15AM 4 So what I did was I took a little bit of the substance, put it

09:15AM 5 in a well and then I added a color test reagent to that well

09:15AM 6 and I observed color changes. And in this case, I observed a

09:15AM 7 blue precipitant, so you could think of it as blue dots that

09:15AM 8 appeared. And with this particular color test reagent, that

09:15AM 9 indicates the presence of cocaine.

09:16AM 10 Q For the cocaine base separate and apart from the cocaine,

09:16AM 11 did you perform the same type of presumptive test?

09:16AM 12 A Yes. I performed the same color test and, again, I saw a

09:16AM 13 blue precipitant which indicated the presence of cocaine.

09:16AM 14 Q And is there another step that you take in your testing?

09:16AM 15 A Yes. So after the presumptive test, I then proceeded to

09:16AM 16 perform a confirmatory test and those are tests that tell us

09:16AM 17 the identity of the substance. So for this particular item, I

09:16AM 18 utilized the Fourier-Transform infrared spectrometer, also

09:16AM 19 known as the FTIR.

09:16AM 20 Q And that's indicated in the test and techniques portion of

09:16AM 21 your report?

09:16AM 22 A Yes.

09:16AM 23 Q And what does the FTIR do?

09:16AM 24 A So it's a bench top instrument that uses infrared light to

09:17AM 25 give us information about a molecule structure. So the

09:17AM 1 infrared light will interact with the substance causing the  
09:17AM 2 molecules to vibrate and so it creates like an energy  
09:17AM 3 fingerprint of, if you will, of the substance. And the  
09:17AM 4 interesting thing about FTIR, this type of test, is that no two  
09:17AM 5 molecules will have the same vibrational energy. So we will be  
09:17AM 6 able to tell two molecules or two substances apart from each  
09:17AM 7 other using this technique. Excuse me.

09:17AM 8 So again, the infrared light interacts with the  
09:17AM 9 substance causing the bonds to vibrate. Some of that infrared  
09:17AM 10 light is absorbed. Some of that goes through to the detector  
09:17AM 11 in which it prints out a graph with peaks and valleys. And so  
09:17AM 12 again, those peaks and valleys are unique to each substance and  
09:18AM 13 we can then take the graph that we obtained, compare it to a  
09:18AM 14 known reference material, reference standard, and we can make  
09:18AM 15 an -- we make the identification that way.

09:18AM 16 Q Based on this type of testing, were you able to  
09:18AM 17 differentiate between cocaine and cocaine base?

09:18AM 18 A Yes.

09:18AM 19 Q This particular item says cocaine hydrochloride. What --  
09:18AM 20 what is that?

09:18AM 21 A So cocaine hydrochloride you can think of a cocaine  
09:18AM 22 molecule with an additional hydrochloride entity attached to  
09:18AM 23 it. And so typically cocaine hydrochloride appears as a white  
09:18AM 24 -- off white powdery substance. And where am I going with  
09:18AM 25 this --



09:18AM 1 Q In the physical exhibit that you looked at, Exhibit 12,  
09:18AM 2 was the cocaine hydrochloride the powdery bags in that?

09:19AM 3 A Yes, yes. So physically, yes, it -- it appears as a white  
09:19AM 4 powdery substance.

09:19AM 5 Q The common name for cocaine hydrochloride something that  
09:19AM 6 we've been referring to?

09:19AM 7 A Typically we just call it cocaine.

09:19AM 8 Q And what about cocaine base?

09:19AM 9 A So cocaine base is, again, the cocaine molecule but it  
09:19AM 10 doesn't have that hydrochloride entity so it's just the cocaine  
09:19AM 11 molecule by itself. Cocaine base, free base we call it. And  
09:19AM 12 it's commonly referred to as crack, crack cocaine. Typically  
09:19AM 13 it'll be a more waxy even rock-like substance. So we don't see  
09:19AM 14 crack in the form of powder. Normally, it's like a more rock  
09:19AM 15 or a waxy, solid substance.

09:19AM 16 Q And is that description in line with the physical exhibit  
09:20AM 17 of the items that you tested that were the cocaine base?

09:20AM 18 A Yes.

09:20AM 19 Q And so after completing these tests, were you able to come  
09:20AM 20 to a conclusion as to the identification of the items or  
09:20AM 21 substances that you tested?

09:20AM 22 A Yes.

09:20AM 23 Q Okay. And those are in the report that we just looked at?

09:20AM 24 A Yes.

09:20AM 25 Q So for this example, it says substance from Ziploc bag

09:20AM 1 containing cocaine hydrochloride. Is that your opinion as the  
09:20AM 2 actual makeup of the substance?

09:20AM 3 A Yes.

09:20AM 4 Q Did you also test items for THC?

09:20AM 5 A Yes.

09:20AM 6 Q And how does that relate to marijuana?

09:20AM 7 A So THC, again, is the psychoactive -- the main  
09:20AM 8 psychoactive component of marijuana. And in this particular  
09:20AM 9 case, I identified THC not marijuana, so the difference there  
09:21AM 10 is that the THC was void of any plant material. So when I  
09:21AM 11 observed it under the microscope, I didn't see any signs of  
09:21AM 12 vegetation, no characteristic traits of cannabis and that we  
09:21AM 13 refer to typically as a concentrate or an extract.

09:21AM 14 Q And that's just for the specific items that you actually  
09:21AM 15 tested?

09:21AM 16 A Yes. In this case.

09:21AM 17 Q And if there were other items that were seized in the  
09:21AM 18 case, you may not have tested those. It's only for the ones  
09:21AM 19 that are included in your report; is that right?

09:21AM 20 A Just for the items on the report.

09:21AM 21 MS. PERLMUTTER: Okay. And if we just zoom out back  
09:21AM 22 to page four.

09:21AM 23 BY MS. PERLMUTTER:

09:21AM 24 Q Do you see the results of some of those THC tests on this  
09:21AM 25 page?

09:21AM 1 A Yes. So there are three items here smoking device,  
09:21AM 2 another substance, two other substances that were found to  
09:22AM 3 contain THC.

09:22AM 4 Q I'm not going to go into it but I just want you to point  
09:22AM 5 out for the jury if the tests were similar or different to the  
09:22AM 6 tests that you did for the cocaine and for the crack?

09:22AM 7 A They are a little bit different but the same concept  
09:22AM 8 presumptive and then a confirmatory test.

09:22AM 9 Q Would you turn to page five, please.

09:22AM 10 This is the end of your official report, right?

09:22AM 11 A Yes.

09:22AM 12 Q And you signed and dated it?

09:22AM 13 A Yes.

09:22AM 14 Q Was this testing checked by someone other than yourself?

09:22AM 15 A Yes. So this report did go through technical review. It  
09:22AM 16 went to a third-party analyst for review.

09:22AM 17 Q And did the third-party analyst have any changes or  
09:22AM 18 corrections to your report?

09:22AM 19 A No.

09:22AM 20 MS. PERLMUTTER: Thank you. At this time, Your Honor,  
09:22AM 21 no further questions.

09:23AM 22 THE COURT: Mr. Mottl, cross-examination when you're  
09:23AM 23 ready.

09:23AM 24 MR. MOTTL: Yes, Your Honor. Thank you.

25



09:23AM 1 CROSS-EXAMINATION

09:23AM 2 BY MR. MOTTL:

09:23AM 3 Q Good morning. The -- I'll just ask you about the weighing  
09:23AM 4 of the substances and then the nature of the substance. The  
09:23AM 5 scale used was a -- is that a -- a milligram scale,  
09:23AM 6 thousandths? I know the -- the error indicator was a point and  
09:23AM 7 then three zeros. Is that -- so that would indicate that you  
09:23AM 8 were using a -- a milligram scale or?

09:23AM 9 A Some milligram. It's actually a four decimal place  
09:24AM 10 balance so we can read --

09:24AM 11 Q Oh, four for an additional --

09:24AM 12 A It's a 10th of a milligram, yes.

09:24AM 13 Q Okay. I noticed there was a fair amount of variation in  
09:24AM 14 the amounts you weighed, net weight. Just took the substance  
09:24AM 15 out of these multiple bags and weighed them and there was a  
09:24AM 16 variation that was well beyond the -- the error margin, plus or  
09:24AM 17 minus 003. So there was a -- it's true that there were a  
09:24AM 18 significant variation in the amounts in the bags? Some more --  
09:24AM 19 or precise and some were not?

09:24AM 20 A I don't know how we could answer that because each bag is  
09:24AM 21 going to have its own weight. So we don't know exactly how  
09:24AM 22 much is in a bag ever. So if we're trying to say there's -- I  
09:24AM 23 didn't get the same amount every time. I don't think that's  
09:24AM 24 a -- that's a reasonable thing to assume in -- in drug cases.

09:25AM 25 Q Well, I'm -- I'm referring to the net weight the in --

09:25AM 1 small packets. And then there were some larger -- larger ones,  
09:25AM 2 Ziplocs, primarily but the smaller ones, for example.  
09:25AM 3 A Yeah.  
09:25AM 4 Q Multiple. You emptied the substances out and you weighed  
09:25AM 5 them?  
09:25AM 6 A Yes.  
09:25AM 7 Q And then you replaced them back in -- back in the bag?  
09:25AM 8 A Yes.  
09:25AM 9 Q You put the substances back in the bag. The amounts you  
09:25AM 10 weighed, the net weight, varied from bag to bag, correct? That  
09:25AM 11 was my question.  
09:25AM 12 A Yes.  
09:25AM 13 Q Some were roughly around a gram, but some in excess of a  
09:25AM 14 gram, some less than a gram, right?  
09:25AM 15 A It's -- it's whatever --  
09:25AM 16 Q And --  
09:25AM 17 A Whatever came out of the bag, yes.  
09:25AM 18 Q Correct. And the variation in some cases, I don't know if  
09:26AM 19 you recall it, sometimes was a 10th or more than a 10th so they  
09:26AM 20 may be -- and I'm referring to -- with reference to one gram  
09:26AM 21 sometimes, 8.5 and other times it was a one -- a full gram plus  
09:26AM 22 additional two tenths or something like that so it was a  
09:26AM 23 variation. Certainly a lot greater than the -- the error that  
09:26AM 24 you had in the scale you were using which was 003 which is  
09:26AM 25 three thousandths, correct?

09:26AM 1 A If I'm understanding correctly or -- or I guess I don't  
09:26AM 2 really understand what -- what you're asking. Are you asking  
09:26AM 3 why each bag was different in net weight?

09:26AM 4 Q No. I'm just -- I'm asking you if that was one of your  
09:26AM 5 observations and you -- the amounts you entered in terms of the  
09:26AM 6 weights that was determined by the scale you were using,  
09:27AM 7 indicated that there was a -- a -- not an insignificant  
09:27AM 8 variation between the weights of one bag as opposed to another  
09:27AM 9 bag. You had the three, one thousandths plus or minus and that  
09:27AM 10 was the error margin on the -- for the scale, but the -- the  
09:27AM 11 variation between the net weight of the contents of one bag  
09:27AM 12 versus another varied much more significantly than the error  
09:27AM 13 margin that you had; isn't that correct?

09:27AM 14 A They're -- they're different, yes, that's correct. But I  
09:27AM 15 don't think we can attribute that to error on the part of the  
09:27AM 16 balance.

09:27AM 17 Q Oh, no. Probably I -- I -- what I was thinking was an  
09:27AM 18 error in who placed the amounts in the bag assuming they were  
09:27AM 19 interested in placing a single gram in each bag?

09:27AM 20 MS. PERLMUTTER: Objection, Your Honor. Testifying.

09:28AM 21 MR. MOTTL: Yeah.

09:28AM 22 THE COURT: Ask a question, if you have one.

09:28AM 23 BY MR. MOTTL:

09:28AM 24 Q Yeah. I was not questioning the accuracy of the  
09:28AM 25 measurements you made.

09:28AM 1 A Okay.

09:28AM 2 Q I was just interested in the variation between one bag and  
09:28AM 3 the next. Thank you.

09:28AM 4 Now, the -- the molecule, cocaine molecule; is it  
09:28AM 5 correct, yeah. Is a three dimensional -- three-dimensional  
09:28AM 6 molecule; is that correct?

09:28AM 7 A If we're talking three-dimensional structure --

09:28AM 8 Q Yes.

09:28AM 9 A -- it's a small molecule. Small molecules don't have  
09:28AM 10 three-dimensional structure like larger things like proteins.  
09:28AM 11 So it's a simple molecule you might say, but I -- I guess I'm  
09:28AM 12 not too sure what you're asking.

09:28AM 13 Q Okay. Excuse my -- I'm possibly in -- in error in that  
09:29AM 14 regard. I did some reading myself.

09:29AM 15 I was interested in the spoilage of -- of cocaine. In  
09:29AM 16 time exposure to air, heat, water, moisture will change it,  
09:29AM 17 correct, and it -- it may essentially become nonactive in terms  
09:29AM 18 of its potency and its effect I guess you'd say psychoactively  
09:29AM 19 and maybe physically. So does it -- it spoils -- cocaine does  
09:29AM 20 spoil?

09:29AM 21 A I don't know that I have the expertise to talk about  
09:29AM 22 cocaine spoilage, but I mean anything not properly preserved,  
09:29AM 23 sure, could degrade.

09:29AM 24 Q Okay. Thank you. Yeah.

09:29AM 25 So you're not an expert in the field. That doesn't



09:29AM 1 fall within your expertise but you can say --

09:30AM 2 A Not in terms of potency and how it affects that, no, I  
09:30AM 3 can't speak to the potency.

09:30AM 4 Q Now, you mentioned potency. My next question relates to  
09:30AM 5 the likelihood of other substances being mixed in with the  
09:30AM 6 cocaine. The presumptive tests that you made which was the --  
09:30AM 7 during the -- the substance as you placed in it blue, that's  
09:30AM 8 not affected by things that might be combined with the cocaine  
09:30AM 9 and that certainly measured that there was a presence of  
09:30AM 10 cocaine in the substance you were testing, correct?

09:30AM 11 A I mean adulterants, cutting agents, they could have an  
09:30AM 12 effect but that's why we follow that up with confirmatory  
09:30AM 13 testing.

09:30AM 14 Q That was my next question. The vibrations you -- you  
09:30AM 15 mentioned will take place irrespective -- vibrating molecules  
09:31AM 16 with the ability to detect the vibration of the molecule that  
09:31AM 17 you're seeking to identify which is cocaine is not affected by  
09:31AM 18 other substances being mixed with it, correct?

09:31AM 19 A So one of the limitations of this FTIR technique is that  
09:31AM 20 the sample needs to be relatively pure in order to get a good  
09:31AM 21 match to a reference standard. And so for all of the items I  
09:31AM 22 tested, all of the cocaine, all of the cocaine base, I got a  
09:31AM 23 near -- or really, really good match for each of those items.  
09:31AM 24 I did not have to chemically clean it up. I did not have to  
09:31AM 25 use other instrumentation, so as an analyst, I would say the

09:31AM 1 samples were relatively pure.

09:31AM 2 Q Was there any way or did you actually determine the -- I'm  
09:32AM 3 probably not saying it correctly. The -- the percentage of the  
09:32AM 4 purity that is how much was pure cocaine as opposed to  
09:32AM 5 something else that may have been mixed with it?

09:32AM 6 A No. That's not a test that I performed.

09:32AM 7 Q Okay. So it seemed relatively pure, but you didn't make a  
09:32AM 8 determination as to exactly how much or how pure it was?

09:32AM 9 A Correct.

09:32AM 10 MR. MOTT: Thank you. All right. I -- I have no  
09:32AM 11 further questions. Thank you.

09:32AM 12 THE COURT: Ms. Perlmutter, redirect?

09:32AM 13 MS. PERLMUTTER: Just a couple of points of  
09:32AM 14 clarification, Your Honor.

09:32AM 15 THE COURT: Go ahead.

09:32AM 16 REDIRECT EXAMINATION

09:32AM 17 BY MS. PERLMUTTER:

09:33AM 18 Q Ms. Unten, if could you pull up Exhibit 16, page four,  
09:33AM 19 please. Okay. I'm circling --

09:33AM 20 Permission to publish, Your Honor.

09:33AM 21 THE COURT: Yes, go ahead.

09:33AM 22 BY MS. PERLMUTTER:

09:33AM 23 Q I circled the top two here and I just want to clarify a  
09:33AM 24 couple points that you were asked on cross-examination. So I'm  
09:33AM 25 going to put a -- that is terrible -- two little arrows there.

09:33AM 1 Could you -- Mr. Mottl asked you about weight  
09:33AM 2 variation between the items and also asked you about the error  
09:33AM 3 on the balance. Could you explain whether those concepts are  
09:33AM 4 the same or different and how that relates to your report?  
09:33AM 5 A Okay. So from item to item, we -- we don't ever know what  
09:34AM 6 the weight actually is. And that's what our job is. It's to  
09:34AM 7 determine what the net weight is. So whether someone put a  
09:34AM 8 gram, three grams, it's not my job to say they were this far  
09:34AM 9 away from a gram. It's just to say, this is the weight that --  
09:34AM 10 that I obtained. So to say there is an error between bags,  
09:34AM 11 that's -- that -- I would say it's not applicable. That's not  
09:34AM 12 something we would ever be able to determine. But -- and the  
09:34AM 13 weight -- or that uncertainty value, that plus or minus .003,  
09:34AM 14 that applies to every weighing that I make. So every item  
09:34AM 15 regardless what the weight is will have that uncertainty value.  
09:34AM 16 And so two very different concepts that I can't really relate  
09:35AM 17 to each other at all.  
09:35AM 18 Q Okay. So when you dumped the contents of the first item  
09:35AM 19 on page four that has the arrows to weigh that, was the net  
09:35AM 20 weight of that contents 3.440 grams?  
09:35AM 21 A There was actually one other decimal after that. It's a  
09:35AM 22 four place balance, but the procedure in place at the time was  
09:35AM 23 to truncate that last value. So that's -- that's the reported  
09:35AM 24 weight is the weight minus that last truncated decimal.  
09:35AM 25 Q Okay. Then you went to the next item.

09:35AM 1 A Yes.

09:35AM 2 Q And it's the second item below the one where I have  
09:35AM 3 indicated with the arrows that's in the circle. When you took  
09:35AM 4 that item and put it -- the powder, the cocaine hydrochloride  
09:35AM 5 on the scale, was that weight 1.786 grams?

09:35AM 6 A Yes.

09:35AM 7 Q So it's just the weight of that specific item; is that  
09:35AM 8 right?

09:35AM 9 A It's that one item, yes.

09:36AM 10 Q And despite the fact that you did not test for purity, are  
09:36AM 11 you -- you were able to determine nevertheless that the items  
09:36AM 12 that you tested had cocaine in them?

09:36AM 13 A Yes.

09:36AM 14 Q And cocaine base?

09:36AM 15 A Yes.

09:36AM 16 MS. PERLMUTTER: Thank you. No further questions,  
09:36AM 17 Your Honor.

09:36AM 18 THE COURT: All right. Ms. Kaoni, you may step down.

09:36AM 19 MS. PERLMUTTER: You can take the exhibit off the --

09:36AM 20 THE COURT: Please call your next witness.

09:36AM 21 MS. PERLMUTTER: Your Honor, the government calls  
09:36AM 22 Special Agent Murray Acosta.

09:37AM 23 THE CLERK: Please raise your right hand.

09:37AM 24 MURRAY ACOSTA,

09:37AM 25 called as a witness, having been first duly sworn, was examined



09:37AM 1 and testified as follows:

09:37AM 2 THE CLERK: Please state your full name and spell your  
09:37AM 3 last name for the record.

09:37AM 4 THE WITNESS: My name is Murray Acosta. Acosta is  
09:37AM 5 spelled, A-C-O-S-T-A.

09:37AM 6 DIRECT EXAMINATION

09:37AM 7 BY MS. PERLMUTTER:

09:37AM 8 Q Good morning, Special Agent Acosta.

09:37AM 9 A Good morning.

09:37AM 10 Q Could you please introduce yourself for the jury?

09:37AM 11 A Sure. My name is Murray Acosta. I'm a special agent with  
09:37AM 12 Homeland Security Investigations.

09:37AM 13 Q How long have you been with Homeland Security  
09:37AM 14 Investigations?

09:37AM 15 A Since 2006.

09:37AM 16 Q Were you in law enforcement prior to that?

09:37AM 17 A Yes.

09:37AM 18 Q And in what capacity?

09:37AM 19 A I was a police officer with the Honolulu Police Department  
09:37AM 20 for five and a half years and I was also a police officer in  
09:37AM 21 Portland, Oregon with the Port of Portland Police Department  
09:37AM 22 and also a few years with customs and border protection.

09:38AM 23 Q In your role at Homeland Security Investigations as a  
09:38AM 24 special agent, could you just describe generally the types of  
09:38AM 25 cases that you've investigated?

09:38AM 1 A Sure. Homeland -- special agents with Homeland Security  
09:38AM 2 Investigations have a wide range of authorities. Including  
09:38AM 3 investigating that of illicit narcotics and child exploitation  
09:38AM 4 type investigations.

09:38AM 5 Q How are you involved in the investigation of Lyle  
09:38AM 6 Cummings?

09:38AM 7 A I am one of the case agents.

09:38AM 8 Q Okay. And what does that mean?

09:38AM 9 A A case agent is you're in charge of investigating the  
09:38AM 10 case, assuring that the case is investigated to its utmost and  
09:38AM 11 to be sure that the elements for a charge is satisfied and  
09:38AM 12 acquired and the case is presented to the U.S. Attorney's  
09:38AM 13 office for review and -- and possibly for other steps  
09:39AM 14 thereafter.

09:39AM 15 Q Did you have a role in taking custody of the physical  
09:39AM 16 drugs in this case including the cocaine and the cocaine base?

09:39AM 17 A Yes, ma'am.

09:39AM 18 Q Okay. And what did you do?

09:39AM 19 A I accepted the evidence in this case from  
09:39AM 20 Detective Matthew Bigoss of the Maui Police Department on  
09:39AM 21 April 1, 20 -- 2021.

09:39AM 22 Q Okay. And are you sure it was 2021?

09:39AM 23 A 2022.

09:39AM 24 Q And did you track or document the movement or custody of  
09:39AM 25 the drugs?

09:39AM 1 A Yes, ma'am.

09:39AM 2 Q And how did you do that?

09:39AM 3 A We track that by -- I placed my signature on the Maui  
09:39AM 4 Police Department chain of custody form and also transferred  
09:39AM 5 that same chain of custody event on a separate more applicable  
09:39AM 6 Department of Homeland Security form which we call a 6051S.

09:40AM 7 MS. PERLMUTTER: Your Honor, permission to publish  
09:40AM 8 Exhibit 14A.

09:40AM 9 THE COURT: Yes, you may.

09:40AM 10 MS. PERLMUTTER: Please publish page one.

09:40AM 11 BY MS. PERLMUTTER:

09:40AM 12 Q Could you describe for the jury what this particular form  
09:40AM 13 is?

09:40AM 14 A This is the Department of Homeland Security form 6051S.  
09:40AM 15 It's our custody receipt for seized property and evidence. Our  
09:40AM 16 version of the chain of custody form.

09:40AM 17 Q And besides your signature on this, where -- well, where  
09:40AM 18 is your signature on this form?

09:40AM 19 A It's toward the lower part in the middle where it says  
09:40AM 20 seizing officer.

09:40AM 21 Q And is there another person's signature on this form?

09:40AM 22 A Yes. Below my signature where it says assistant line 16,  
09:40AM 23 it's -- there's also another signature there and it's that of  
09:40AM 24 our seized property custodian and his name is Zev Aquin  
09:41AM 25 (phonetic).

09:41AM 1 Q And what's Mr. Aquin's role?

09:41AM 2 A He accepts -- he's in charge of safeguarding the evidence  
09:41AM 3 that's placed in his -- in his custody.

09:41AM 4 Q And where does that evidence go when it's placed in  
09:41AM 5 Mr. Aquin's custody?

09:41AM 6 A There are certain types of evidence that Mr. Aquin can  
09:41AM 7 keep in his custody that's not deemed a high value type of --  
09:41AM 8 of evidence. Those that are not deemed high value evidence  
09:41AM 9 will remain in his care. But for other types of evidence like  
09:41AM 10 narcotics, it goes further and is given over to fines,  
09:41AM 11 penalties and forfeitures with customs and border protection.

09:41AM 12 Q So what happened in this case?

09:41AM 13 A Exact -- and that's -- certain of the items in this case  
09:41AM 14 remained in seized property custodian Zev Aquin's care and  
09:42AM 15 also -- and the other types of evidence like the narcotics  
09:42AM 16 evidence was handed over to customs and border protection  
09:42AM 17 like -- like the narcotics evidence.

09:42AM 18 Q Okay. So we're looking specifically at this form. What  
09:42AM 19 evidence is pertaining to this form?

09:42AM 20 A This form is cocaine with packing material.

09:42AM 21 Q So where was this evidence stored?

09:42AM 22 A Oh, this evidence was stored with seized property  
09:42AM 23 custodian Zev Aquin.

09:42AM 24 Q And where -- where is that?

09:42AM 25 A We -- oh, at the -- at the federal building at 300 Ala



09:42AM 1 Moana Boulevard.

09:42AM 2 Q And is it stored in a secure location?

09:42AM 3 A Yes.

09:42AM 4 Q Okay. And if you could turn to page two.

09:42AM 5 Is your signature on this form as well?

09:42AM 6 A Yes.

09:42AM 7 Q And where is it indicated on this form?

09:43AM 8 A It's located in the received by signature section. I'm  
09:43AM 9 the last signature on that -- in that form.

09:43AM 10 Q And for all of the items that you took custody of in  
09:43AM 11 Exhibit 14A and B, does your signature appear on those forms?

09:43AM 12 A Yes.

09:43AM 13 Q And if we were to turn to Exhibit 14B, are there similar  
09:43AM 14 forms that we just looked at for the marijuana and other items  
09:43AM 15 that were not cocaine or cocaine base?

09:43AM 16 A Yes, ma'am.

09:43AM 17 Q Thank you.

09:43AM 18 When you received the items from Maui, how are they  
09:43AM 19 packaged?

09:43AM 20 A They were packaged in -- in evidence bags and signed and  
09:43AM 21 sealed.

09:43AM 22 Q Specifically I want to talk a bit about the cocaine and  
09:43AM 23 the cocaine base. How were those packaged?

09:44AM 24 A Yeah, they were placed in sealed packages and further  
09:44AM 25 outer packages in manila envelopes.

09:44AM 1 Q Did you do anything with the packaging once you received  
09:44AM 2 it from Detective Bigoss?

09:44AM 3 A Yes. I verified the -- the type of evidence that was  
09:44AM 4 listed on the evidence sheet and I also verified the quantity  
09:44AM 5 of to be sure that everything was present.

09:44AM 6 Q Did you open the outer packaging?

09:44AM 7 A Yes, I did.

09:44AM 8 Q And why did you open the outer packaging?

09:44AM 9 A Just to verify that what was said on the evidence sheet is  
09:44AM 10 exactly what was inside the -- the -- in the packaging.

09:44AM 11 Q And were you able to make that verification?

09:44AM 12 A Yes, ma'am.

09:44AM 13 Q And then how did you place the items into custody, did you  
09:44AM 14 put them back in the outer manila envelope?

09:44AM 15 A No, I did not. Actually, in accordance with -- with --  
09:44AM 16 with -- which is consistent with HSI's evidence, I actually  
09:44AM 17 consolidated like evidence and then placed them all in one bag.

09:45AM 18 Q What do you mean by consolidated like evidence?

09:45AM 19 A We -- I placed the cocaine and the cocaine base evidence  
09:45AM 20 which was within little baggies and placed them all in one bag.

09:45AM 21 Q Okay. And did you seal that?

09:45AM 22 A Yes.

09:45AM 23 Q And how did you seal it?

09:45AM 24 A I sealed on -- within our evidence bag, there is a  
09:45AM 25 evidence tape that's on the bag itself. Taped it shut and I

09:45AM 1 placed my initials and the date that it was -- it was -- it was  
09:45AM 2 sealed.

09:45AM 3 Q And where did you do this verification and sealing?

09:45AM 4 A They were all made with witnesses around me and within the  
09:45AM 5 evidence room itself.

09:45AM 6 Q And is that the evidence room where they then went into  
09:45AM 7 secure location?

09:45AM 8 A Yes, ma'am.

09:45AM 9 MS. PERLMUTTER: Your Honor, at this time, I'd ask  
09:45AM 10 permission to approach the witness with exhibits.

09:45AM 11 THE COURT: Exhibit 12. Is this Exhibit 12?

09:46AM 12 MS. PERLMUTTER: Yes, Your Honor, it's Exhibit 12 and  
09:46AM 13 12A which has been marked for identification purposes. Before  
09:46AM 14 court this morning, defense attorney had an opportunity to  
09:46AM 15 inspect Exhibit 12A which is related to Exhibit 12.

09:46AM 16 THE COURT: I don't have a 12A. Is this a --

09:46AM 17 MS. PERLMUTTER: This is what we mentioned yesterday.

09:46AM 18 THE COURT: Has it since been filed?

09:46AM 19 MS. PERLMUTTER: There's not been a new filing yet  
09:46AM 20 because Your Honor said we should consult with defense counsel  
09:46AM 21 first.

09:46AM 22 THE COURT: I'm not sure how I'm supposed to keep  
09:46AM 23 track of exhibits on an exhibit list that I don't have. Is  
09:46AM 24 there an exhibit -- revised exhibit list?

09:46AM 25 MS. PERLMUTTER: Not yet, Your Honor. We intended to

09:46AM 1 file it after court this morning, if it was indeed admitted.

09:46AM 2 THE COURT: What other changes have been made to your

09:46AM 3 exhibit list that I'm not aware of?

09:46AM 4 MS. PERLMUTTER: None.

09:46AM 5 THE COURT: So 12 and 12A. Is 12A part of 12?

09:46AM 6 MS. PERLMUTTER: 12A is separately packaged but it is

09:47AM 7 part of 12 in that it is -- relates to the outer packaging of

09:47AM 8 the drug materials.

09:47AM 9 THE COURT: All right. You may approach the witness

09:47AM 10 and I would appreciate some foundation for what 12A consists of

09:47AM 11 since I don't have it on my current list.

09:47AM 12 MS. PERLMUTTER: Yes, Your Honor, the government

09:47AM 13 intends to do so. Thank you.

09:47AM 14 BY MS. PERLMUTTER:

09:47AM 15 Q Okay. Let's start with Exhibit 12A. If you could

09:47AM 16 describe for the jury what -- what it is and how -- how it came

09:47AM 17 into your possession?

09:47AM 18 A Evidence 12A is an evidence -- Homeland Security

09:47AM 19 Investigations evidence bag which contains a manila -- a number

09:47AM 20 of manila envelopes to include also a red or magenta container

09:48AM 21 which is in -- in pieces.

09:48AM 22 Q And what do those manila envelopes pertain to?

09:48AM 23 A Those manila envelopes were received by me by -- these

09:48AM 24 manila envelopes had the actual cocaine baggies within them

09:48AM 25 when I received them from Lieutenant Bigoss.



09:48AM 1 Q Okay. Did some of the manila envelopes also have

09:48AM 2 marijuana and THC products in them?

09:48AM 3 A Yes, ma'am.

09:48AM 4 Q Okay. And what does that plastic container pertain to?

09:48AM 5 A It actually was -- it -- it actually contained at one

09:48AM 6 point some -- some of the cocaine baggies also.

09:48AM 7 Q And why is that packaged in the HSI evidence bag separate

09:48AM 8 from Exhibit 12?

09:48AM 9 A Because the -- these were like the outer packaging of

09:48AM 10 the -- which contain the -- the cocaine that was placed in it.

09:48AM 11 Q Okay. If you can put that exhibit down, please. And take

09:49AM 12 Exhibit 12 and see -- I see that you have it. Do you recognize

09:49AM 13 Exhibit 12?

09:49AM 14 A Yes, ma'am.

09:49AM 15 Q And what is Exhibit 12?

09:49AM 16 A Exhibit 12 is the consolidation of the cocaine evidence

09:49AM 17 in -- in this. The actual cocaine with the baggies which has

09:49AM 18 the cocaine and cocaine base within them.

09:49AM 19 Q Okay. And besides the bag in Exhibit 12 and the manila

09:49AM 20 envelopes and the plastic container in Exhibit 12A, do you have

09:49AM 21 other sealed bags that you made for purposes of the items that

09:49AM 22 you received?

09:49AM 23 A Yes. For other items like the -- the THC, and other items

09:49AM 24 like that.

09:49AM 25 Q And where are those items today?

09:49AM 1 A Those are still kept in our evidence room.

09:49AM 2 Q And what was your role in getting both Exhibit 12 and  
09:49AM 3 Exhibit 12A to court today?

09:49AM 4 A To present them for the -- for the court in this case.

09:49AM 5 Q And what steps did you take to get them out of the secure  
09:50AM 6 location?

09:50AM 7 A There is a chain of custody sheet which is our 6051S form  
09:50AM 8 which is located in a pocket in the back of each of the bags.

09:50AM 9 And every time the -- that I would -- would pick up the -- the

09:50AM 10 evidence bags, I would actually have an escort with me to

09:50AM 11 assure its safety and -- so they would be escorted to court

09:50AM 12 together. I would actually sign the form showing that it was

09:50AM 13 signed out by myself and with an escort I would actually bring

09:50AM 14 the evidence bags to court today.

09:50AM 15 Q So Exhibit 12 you mentioned there is a form in that bag

09:50AM 16 itself, could you hold it up and show -- show us what that is?

09:50AM 17 A Sure. This is actually one form. This is the first page

09:50AM 18 of the 6051S form. And this is just a continuing --

09:51AM 19 continuation page so in this form the signatures are all filled

09:51AM 20 out. We just -- we just continue on to a continuation page

09:51AM 21 here.

09:51AM 22 Q And what's the purpose of keeping this form with the

09:51AM 23 actual custody bag?

09:51AM 24 A To assure that there's proper chain of custody for that

09:51AM 25 evidence bag itself.

09:51AM 1 Q Is there a similar form with Exhibit 12A?

09:51AM 2 A Yes, ma'am.

09:51AM 3 Q And did you receive the items in both Exhibit 12, bless  
09:51AM 4 you, Exhibit 12 and Exhibit 12A at the same time from  
09:51AM 5 Detective Bigoss?

09:51AM 6 A Yes.

09:51AM 7 Q And in the sealed bags themselves in both Exhibit 12 and  
09:51AM 8 Exhibit 12A, is your signature on that seal?

09:51AM 9 A Yes, it's my initials.

09:51AM 10 Q What's the purpose of that?

09:51AM 11 A To show that it was me that was -- that I was the one that  
09:52AM 12 sealed the bag.

09:52AM 13 Q Are the items in Exhibit 12 in substantially the same  
09:52AM 14 condition of when you received them from Detective Bigoss?

09:52AM 15 A Yes, ma'am.

09:52AM 16 Q Are the items in Exhibit 12A in substantially the same  
09:52AM 17 condition of when you received them from Detective Bigoss?

09:52AM 18 A Yes, ma'am.

09:52AM 19 MS. PERLMUTTER: Your Honor, at this time I'd move to  
09:52AM 20 admit Exhibit 12.

09:52AM 21 THE COURT: Any objection, Mr. Mottl?

09:52AM 22 MR. MOTTL: No, Your Honor.

09:52AM 23 MS. PERLMUTTER: I'd also move to admit Exhibit 12A.

09:52AM 24 THE COURT: Any objection to that, Mr. Mottl?

09:52AM 25 MR. MOTTL: No, Your Honor.

09:52AM 1 THE COURT: All right. Without objection,  
09:52AM 2 Government's Exhibits 12 and 12 alpha are both admitted.  
09:52AM 3 (Government's Exhibits 12 and 12A were received in evidence.)  
09:52AM 4 MS. PERLMUTTER: No further questions for this  
09:52AM 5 witness, Your Honor.  
09:52AM 6 THE COURT: Cross-examination, Mr. Mottl?  
09:52AM 7 MS. PERLMUTTER: Your Honor, should I remove Exhibits  
09:52AM 8 12 and 12A from --  
09:52AM 9 THE COURT: You can. I don't know if Mr. Mottl  
09:52AM 10 intends to use it, but we can retrieve it if he -- if he does.  
09:52AM 11 MS. PERLMUTTER: Would you like me to keep them up  
09:52AM 12 there, Mr. Mottl?  
09:52AM 13 MR. MOTTL: No, thank you.  
09:53AM 14 Your Honor, I have no questions for Mr. Acosta.  
09:53AM 15 THE COURT: No questions?  
09:53AM 16 MR. MOTTL: Thank you.  
09:53AM 17 THE COURT: You may step down, sir. Thank you.  
09:53AM 18 All right. Ms. Perlmutter or Ms. Olson, your next  
09:53AM 19 witness.  
09:53AM 20 MS. PERLMUTTER: Yes, Your Honor. At this time, the  
09:53AM 21 government would call Ryan Faulkner.  
09:53AM 22 THE CLERK: Please raise your right hand.  
09:53AM 23 RYAN FAULKNER,  
09:53AM 24 called as a witness, having been first duly sworn, was examined  
09:53AM 25 and testified as follows:



09:53AM 1 THE CLERK: Please state your full name and spell your  
09:54AM 2 last name for the record.

09:54AM 3 THE WITNESS: My name is Ryan Faulkner. Last name  
09:54AM 4 spelled, F-A-U-L-K-N-E-R.

09:54AM 5 DIRECT EXAMINATION

09:54AM 6 BY MS. PERLMUTTER:

09:54AM 7 Q Good afternoon, Special Agent -- or good morning. I have  
09:54AM 8 to change, recalibrate my time as well. Good morning, Special  
09:54AM 9 Agent Faulkner.

09:54AM 10 A Good morning, ma'am.

09:54AM 11 Q Would you please introduce yourself to the jury by  
09:54AM 12 explaining to them who you work for?

09:54AM 13 A My name is Ryan Faulkner and I work for Homeland Security  
09:54AM 14 Investigations.

09:54AM 15 Q And what specific job titles do you hold at Homeland  
09:54AM 16 Security?

09:54AM 17 A I'm currently the resident agent in charge for an area  
09:54AM 18 that includes Kauai, Maui and Hawaii island so I cover HSI  
09:54AM 19 operation and things that our agency does on those three  
09:54AM 20 islands.

09:54AM 21 Q And what does it mean to be a resident agent in charge  
09:54AM 22 versus a special agent?

09:54AM 23 A The special agents generally conduct the investigations  
09:55AM 24 that HSI does. And the resident agent in charge is a  
09:55AM 25 supervisory position that manages the investigations and agents

09:55AM 1 and task force officers on the various islands.

09:55AM 2 Q How long have you been the resident agent in charge?

09:55AM 3 A For approximately eight months.

09:55AM 4 Q And prior to that, what were you doing at Homeland

09:55AM 5 Security?

09:55AM 6 A Prior to that I was a special agent assigned to the

09:55AM 7 Honolulu office and I was a resident agent on the Big Island so

09:55AM 8 I conducted investigations for our agency on that particular

09:55AM 9 island.

09:55AM 10 Q While you were a special agent that was on the Big Island,

09:55AM 11 did you also conduct investigations on other neighboring

09:55AM 12 islands?

09:55AM 13 A I did.

09:55AM 14 Q And did those investigations include the island of Maui?

09:55AM 15 A Yes, ma'am.

09:55AM 16 Q And how long have you been at Homeland Security?

09:55AM 17 A I've been with the agency for a little over 16 years.

09:55AM 18 Q And when you started, were you a special agent?

09:55AM 19 A Yes, ma'am.

09:55AM 20 Q So is it fair to say that for almost 15 years you were a

09:56AM 21 special agent?

09:56AM 22 A Yes, ma'am.

09:56AM 23 Q And then since that time, you've been the resident agent

09:56AM 24 in charge?

09:56AM 25 A That's correct.

09:56AM 1 Q Okay. And what other type of law enforcement experience  
09:56AM 2 do you have?

09:56AM 3 A Prior to that for ten years from 1997 through 2007, I was  
09:56AM 4 a police officer here with the Honolulu Police Department. And  
09:56AM 5 within those times and before that for approximately 30 years,  
09:56AM 6 I have been a military police officer with the U.S. Army  
09:56AM 7 Reserves.

09:56AM 8 Q Are you still in the army reserves?

09:56AM 9 A I am.

09:56AM 10 Q Could you describe -- let's focus on your special agent  
09:56AM 11 role, your duties and responsibilities at Homeland Security.

09:56AM 12 A So as a special agent with Homeland Security  
09:56AM 13 Investigations, I was tasked with investigating various types  
09:56AM 14 of crimes or whatever is in our agency's investigative  
09:56AM 15 portfolio, but specifically I was tasked with who was involved  
09:56AM 16 in primarily for the majority of my career narcotics and  
09:57AM 17 firearms types of investigations.

09:57AM 18 Q And when you were in law enforcement with the Honolulu  
09:57AM 19 Police Department, what was your focus there?

09:57AM 20 A Of the ten years I was there over eight years I spent  
09:57AM 21 doing plain clothes narcotics investigations as well.

09:57AM 22 Q As a law enforcement officer, I know it's been a while,  
09:57AM 23 are you able to ballpark approximately how many narcotics or  
09:57AM 24 drug investigations you've been a part of?

09:57AM 25 A Yes, ma'am, conservatively I've been involved in well over

09:57AM 1 400 narcotics investigations.

09:57AM 2 Q Could you explain your involvement in various roles in  
09:57AM 3 those investigations?

09:57AM 4 A Yes. They range -- it was a wide range so at times I  
09:57AM 5 would be the case agent which is basically the investigative  
09:57AM 6 leader in charge of every aspect of the investigation, and  
09:57AM 7 there were times I would play a supporting role which would  
09:57AM 8 include either assisting with a search warrant, processing  
09:57AM 9 evidence, a crime scene, interviewing suspects and/or witnesses  
09:58AM 10 and compiling evidence, conducting surveillance, and I also  
09:58AM 11 worked in -- in undercover capacity on several occasions as  
09:58AM 12 well.

09:58AM 13 Q Could you describe that undercover capacity work that you  
09:58AM 14 did?

09:58AM 15 A Yes. When I was with the Honolulu Police Department, I  
09:58AM 16 served in an undercover capacity and -- and in -- that involved  
09:58AM 17 basically posing as a -- a buyer of narcotics and purchasing  
09:58AM 18 various amounts of cocaine, MDMA and rock cocaine.

09:58AM 19 Q And we didn't talk about this specific nature of your drug  
09:58AM 20 investigations, have some of those investigations included  
09:58AM 21 cocaine?

09:58AM 22 A They have.

09:58AM 23 Q And have some also included cocaine base?

09:58AM 24 A Yes, ma'am.

09:58AM 25 Q Is it fair to refer to cocaine base as crack?



09:58AM 1 A It is.

09:58AM 2 Q So can I use those words interchangeably here?

09:58AM 3 A Yes, ma'am.

09:58AM 4 Q And approximately how many investigations have you done  
09:58AM 5 involving cocaine or crack?

09:58AM 6 A I would estimate that well over 50 of my narcotics  
09:59AM 7 investigations involved cocaine which is more common, and of  
09:59AM 8 those investigations, at least a dozen involved rock or crack  
09:59AM 9 cocaine.

09:59AM 10 Q And how many search warrants involving drugs have you been  
09:59AM 11 involved with?

09:59AM 12 A At least 150 to 200 conservatively.

09:59AM 13 Q And what are the location generally that you've been  
09:59AM 14 involved with in the searches?

09:59AM 15 A I've been involved in residential search warrants, vehicle  
09:59AM 16 search warrants, boats and other vessels, search warrants of  
09:59AM 17 luggage, and people internally body carrying drugs from one  
09:59AM 18 city to another.

09:59AM 19 Q What jurisdictions have you participated search warrants  
09:59AM 20 in?

09:59AM 21 A Primarily, they have been the islands of Hawaii and I've  
09:59AM 22 also participated in search warrants in California, Arizona,  
09:59AM 23 Texas that I can recall right now.

09:59AM 24 Q You participated in State of Hawaii search warrants?

10:00AM 25 A I have.

10:00AM 1 Q And also federal search warrants?

10:00AM 2 A That's correct.

10:00AM 3 Q And if you could describe a little bit more detail about  
10:00AM 4 your drug investigations. What's the nature of the different  
10:00AM 5 types of investigations that you've -- you've been a part of?

10:00AM 6 A They're wide ranging. Typically, the investigations  
10:00AM 7 especially at the federal level target drug trafficking  
10:00AM 8 organizations. So we typically look at the structure of the  
10:00AM 9 organization and attempt to disrupt or dismantle that  
10:00AM 10 organization in any way we can. So they involve undercover  
10:00AM 11 purchases, informant purchases, surveillance, telephone  
10:00AM 12 analysis, wiretap investigations and other types of  
10:00AM 13 interdiction.

10:00AM 14 Q Have you been involved in investigations that just  
10:00AM 15 involved individual drug dealers?

10:00AM 16 A That's correct.

10:00AM 17 Q Have you also been involved in investigations that  
10:00AM 18 involved things like a car stop?

10:00AM 19 A Yes, many times.

10:01AM 20 Q What's -- what's a car stop?

10:01AM 21 A A car stop is when law enforcement for a specific reason  
10:01AM 22 attempts to and hopefully successfully stops a moving vehicle  
10:01AM 23 for the purpose of furthering an investigation. And there  
10:01AM 24 could be a number of reasons that predicate or trigger that  
10:01AM 25 type of a -- of a car stop.

10:01AM 1 Q You've been involved in prosecutions that involved

10:01AM 2 narcotics found only in a car?

10:01AM 3 A Yes, ma'am.

10:01AM 4 Q And have you been involved in investigations involving

10:01AM 5 only one type of narcotics such as cocaine?

10:01AM 6 A Yes.

10:01AM 7 Q And have you been involved in investigations involving

10:01AM 8 multiple types of drugs?

10:01AM 9 A Yes.

10:01AM 10 Q You also have been involved in investigations specifically

10:01AM 11 involving possession with the intent to distribute?

10:01AM 12 A Yes, I have.

10:01AM 13 Q From this experience are you familiar with the

10:01AM 14 distribution and the circumstances involving a narcotics

10:01AM 15 distribution in Hawaii?

10:01AM 16 A Yes.

10:01AM 17 Q You also received training involving narcotics?

10:02AM 18 A Yes, I have.

10:02AM 19 Q Okay. Could you describe some of that training?

10:02AM 20 A Yes. From a formal perspective, I have criminal justice

10:02AM 21 training as it pertains to education. That would be a

10:02AM 22 bachelor's degree in criminal justice. I hold a master's

10:02AM 23 degree in forensic science with an emphasize on crime scene

10:02AM 24 investigations, and I'm moving on to periodic training whether

10:02AM 25 it be through the military or through various organizations.

10:02AM 1 I've -- I attend training conferences on a regular basis that  
10:02AM 2 cover specific topics like drug interdiction investigations,  
10:02AM 3 interviewing techniques, drug recognition and the like.

10:02AM 4 Q And does your work at Homeland Security Investigations  
10:02AM 5 involve other law enforcement officers involved in narcotics  
10:02AM 6 investigations on Maui?

10:02AM 7 A Yes. It routinely does.

10:02AM 8 Q Were you involved in the investigation of this case?

10:03AM 9 A I was not.

10:03AM 10 Q What's your purpose for your testimony today?

10:03AM 11 A I was asked to evaluate some of the evidence that was  
10:03AM 12 provided to me and made specific determinations as to drug  
10:03AM 13 types, amounts, prices, what the market values are for drugs,  
10:03AM 14 and distribution quantities as it pertains to distribution  
10:03AM 15 versus possession.

10:03AM 16 MS. PERLMUTTER: Your Honor, at this time, I move to  
10:03AM 17 qualify --

10:03AM 18 Is it fair to call you Special Agent still or should I  
10:03AM 19 call you resident agent in charge?

10:03AM 20 THE WITNESS: Special agent is fine.

10:03AM 21 MS. PERLMUTTER: Okay. This time I'd move to qualify  
10:03AM 22 Special Agent Faulkner as an expert in drug distribution and  
10:03AM 23 trafficking in Hawaii.

10:03AM 24 MR. MOTTL: No objection, Your Honor.

10:03AM 25 THE COURT: Without objection, the witness Special



10:03AM 1 Agent Faulkner may testify within the meaning of Federal Rule

10:03AM 2 of Evidence 702 in the field of drug distribution and

10:03AM 3 trafficking in Hawaii.

10:04AM 4 You may proceed.

10:04AM 5 BY MS. PERLMUTTER:

10:04AM 6 Q What's the evidence or the information that you've

10:04AM 7 reviewed in this case for preparing for your testimony today?

10:04AM 8 A In this case I reviewed photographs that were taken during

10:04AM 9 the execution of a search warrant. I also reviewed crime

10:04AM 10 laboratory reports that were generated as a result of what was

10:04AM 11 found during that search warrant execution.

10:04AM 12 Q Did you also inspect the physical drugs that were seized?

10:04AM 13 A I did have that opportunity, yes.

10:04AM 14 Q And have you spoken to the investigators involved in this

10:04AM 15 case regarding the circumstances of the seizure?

10:04AM 16 A I did not speak to them directly.

10:04AM 17 Q Have you done other preparation in order to prepare and --

10:04AM 18 your testimony today?

10:04AM 19 A Yes. I spoke -- I reviewed prior reports as they pertain

10:04AM 20 to prior investigations I was involved in just to get an idea

10:04AM 21 of what drug prices may have been ballpark back then when this

10:04AM 22 case occurred. And I also spoke with law enforcement

10:05AM 23 professionals, other colleagues to solidify some of the

10:05AM 24 theories as they pertain to distribution and prices.

10:05AM 25 Q And did you speak to law enforcement colleagues in Maui?

10:05AM 1 A I did.

10:05AM 2 Q And did you review any law enforcement databases?

10:05AM 3 A I did.

10:05AM 4 Q And what was the purpose of that?

10:05AM 5 A It was to pull narrative reports to look at what prices

10:05AM 6 were available over certain periods of time. And to confirm

10:05AM 7 the prices basically from back -- back when that happened.

10:05AM 8 Q Based on all the evidence that you've reviewed and the

10:05AM 9 other independent research you did like the law enforcement

10:05AM 10 database, have you formed an opinion as to the cocaine and

10:05AM 11 cocaine base that were seized in this case?

10:05AM 12 A Yes.

10:05AM 13 Q Okay. Is that opinion based on your experience and

10:05AM 14 training?

10:05AM 15 A Yes, ma'am.

10:05AM 16 Q And what's the bottom line opinion that you formed in this

10:06AM 17 case?

10:06AM 18 A The bottom line opinion is that the items that I viewed

10:06AM 19 that were specifically the cocaine as well as -- as well as the

10:06AM 20 cocaine base were amounts that were packaged and -- and the

10:06AM 21 quantities were that of distribution not just simple

10:06AM 22 possession.

10:06AM 23 Q Okay. Let's discuss the various pieces of evidence and

10:06AM 24 the circumstances that led you to this opinion.

10:06AM 25 MS. PERLMUTTER: If we could, please, publish

10:06AM 1 Exhibit 11 at page 23.

10:06AM 2 THE COURT: Yes, you may.

10:06AM 3 MS. PERLMUTTER: Thank you.

10:06AM 4 BY MS. PERLMUTTER:

10:06AM 5 Q So there is a series of photos taken from the search  
10:06AM 6 warrant of the vehicle. Did you review all of those photos in  
10:06AM 7 preparation for your testimony today?

10:06AM 8 A Yes, I did.

10:06AM 9 Q And is this page, page 23, one of those photos that you  
10:07AM 10 reviewed?

10:07AM 11 A Yes, it was.

10:07AM 12 Q Do you recognize just by looking at this photo based on  
10:07AM 13 your training and experience what these drugs purport to be?

10:07AM 14 A Yes.

10:07AM 15 Q And what -- what based on their appearance do these look  
10:07AM 16 like?

10:07AM 17 A So I was viewing the photo, to the left of the photo,  
10:07AM 18 there are four separate Ziploc baggies. They appear to contain  
10:07AM 19 an off-white colored rock-like substance and they resemble  
10:07AM 20 visually what appear to be macadamia nuts. Those in my opinion  
10:07AM 21 are crack cocaine also referred to as cocaine base. To the  
10:07AM 22 right of the same photo, the other packets that are of similar  
10:07AM 23 size that contain a white, powdery substance appear to be  
10:07AM 24 various quantities of cocaine, powder cocaine.

10:07AM 25 Q What's the difference between cocaine and crack?

10:07AM 1 A So cocaine is in its -- in its pure form, cocaine  
10:07AM 2 hydrochloride is basically what you refer to -- what -- what is  
10:07AM 3 commonly referred to as cocaine after it's been processed  
10:08AM 4 and -- and placed into like a brick or brick. Is what they  
10:08AM 5 call it, and you cut pieces off of the brick of cocaine powder  
10:08AM 6 and -- and those can be broken down to smaller quantities.

10:08AM 7 Now, the process in converting powder cocaine to crack  
10:08AM 8 cocaine is commonly referred to as what they call rocking it up  
10:08AM 9 which is basically a process in which an additive is introduced  
10:08AM 10 into the cocaine powder through a -- through a heating process  
10:08AM 11 and -- and water and a -- and a secondary process. The final  
10:08AM 12 result is it will turn into like a cookie and that's basically  
10:08AM 13 the crack cocaine. And then the cookie is then chipped off  
10:08AM 14 into smaller rock like or macadamia nut like pieces and brought  
10:08AM 15 in -- broken into smaller quantities that could then be sold or  
10:08AM 16 distributed.

10:08AM 17 Q If you could describe for the jury the difference between  
10:08AM 18 cocaine and crack, to the average user. So I guess we could  
10:09AM 19 start, how is it ingested into the body?

10:09AM 20 A So the main way that powder cocaine is ingested or  
10:09AM 21 introduced into the body is basically through -- it goes  
10:09AM 22 through the nostril. That's the main way. There are a couple  
10:09AM 23 of less common ways but the main predominant way that it's  
10:09AM 24 introduced is where a user would open a baggy of powder  
10:09AM 25 cocaine, pour it on to a -- a clean surface usually a class



10:09AM 1 surface or some people like to use their cell phones because  
10:09AM 2 it's a nice clean surface. And then they'll use an object to  
10:09AM 3 make it into a line and they will snort the line through either  
10:09AM 4 a rolled up dollar bill or a straw and those are two of the  
10:09AM 5 common ways to snort the cocaine and it will get introduced  
10:09AM 6 into the body through the nasal passage which will give that  
10:09AM 7 person the desired effect.

10:09AM 8 Q And what about crack?

10:09AM 9 A So crack cocaine is a little bit different in that the  
10:10AM 10 typical most common and popular way to use crack cocaine is  
10:10AM 11 use -- is to smoke it through a pipe and what that basically is  
10:10AM 12 it's a straight tubular glass pipe. And stuffed on one end of  
10:10AM 13 the pipe, it will be typically either a piece of Brillo pad or  
10:10AM 14 a copper pad which basically is used because that heats quicker  
10:10AM 15 or can hold heat better. And the user will hold the -- the  
10:10AM 16 pipe and put a portion of the rock into the end of the pipe and  
10:10AM 17 use a -- and use a heating element like a butane lighter or a  
10:10AM 18 high heat lighter in order to cause that rock cocaine to  
10:10AM 19 vaporize and then smoke it through the glass pipe into the  
10:10AM 20 mouth and that's how it's introduced into the body.

10:10AM 21 Q Based on your review of the photographs of the seized  
10:10AM 22 evidence, was there a crack pipe found with the crack?

10:10AM 23 A Not that I observed.

10:10AM 24 Q What about the difference in cost, just generally. Is one  
10:11AM 25 more expensive than the other?

10:11AM 1 A Yes. Typically, cocaine in its powder form can -- can get  
10:11AM 2 a better price than rock cocaine in its -- in its crack cocaine  
10:11AM 3 form.

10:11AM 4 Q And in one type of session or high, typically how much  
10:11AM 5 would a user use for one session?

10:11AM 6 A In -- in powder cocaine, a gram, a half gram to a gram  
10:11AM 7 is -- is the most common dosage unit or -- or line that someone  
10:11AM 8 would typically use. It could be a little bit more, a little  
10:11AM 9 bit less depending on the quality. So if someone had put --  
10:11AM 10 had done a line of cocaine and they didn't like the desired  
10:11AM 11 effect because it had too many cutting agents or it was -- it  
10:11AM 12 was what they call stepped on which means too many additives  
10:11AM 13 were introduced into the pure cocaine, then they might do a  
10:11AM 14 second line or a second gram to then enhance their high or get  
10:11AM 15 a better effect.

10:11AM 16 Q What about crack?

10:11AM 17 A Crack is -- gives you a much more intense and -- and  
10:12AM 18 the -- the high from -- generated from crack cocaine is a  
10:12AM 19 shorter high but it -- it -- it is more intense and it's -- and  
10:12AM 20 it lasts -- I'm sorry. It starts quicker from when it gets  
10:12AM 21 into the -- into the body because partly because of the -- it  
10:12AM 22 comes in as a vapor or through -- it -- it gets smoked.

10:12AM 23 Q And in looking at this particular picture in front of you,  
10:12AM 24 I see a photo of at least two individual crack rocks. Is that  
10:12AM 25 fair and accurate based on the photo?

10:12AM 1 A Yes, ma'am.

10:12AM 2 Q Okay. And would that represent what you just described as  
10:12AM 3 one session?

10:12AM 4 A It could, but visually these -- these rocks appear a  
10:12AM 5 little bit larger than what one would want to put a crack pipe.  
10:12AM 6 So a typical crack user because they want to preserve and  
10:12AM 7 prolong the amount of hits that they are allowed to have per  
10:12AM 8 rock, they may break it in half or in thirds so it will fit  
10:12AM 9 into in the crack pipe appropriately.

10:12AM 10 Q Do you see photos of a rock broken in half in this  
10:13AM 11 picture?

10:13AM 12 A Yes, ma'am.

10:13AM 13 Q And could you describe for the jury where you see that?

10:13AM 14 A I see -- at least the top two pictures where you could see  
10:13AM 15 where the -- it -- it break -- there's like a breaking point in  
10:13AM 16 the -- in the item itself or the -- or the rock where it  
10:13AM 17 appears to have been cut in half or broken in half or something  
10:13AM 18 was done to it where it was halved.

10:13AM 19 Q Did you have an opportunity to review the actual physical  
10:13AM 20 evidence of the cocaine and crack in this case?

10:13AM 21 A Yes, I have.

10:13AM 22 Q Okay. And were you able to confirm that what you just  
10:13AM 23 described is what the actual physical evidence looks like as  
10:13AM 24 well?

10:13AM 25 A Yes.

10:13AM 1 MS. PERLMUTTER: Okay. You can take that picture off

10:13AM 2 right now.

10:13AM 3 BY MS. PERLMUTTER:

10:13AM 4 Q Generally, I'd like to focus on cocaine first. If you

10:13AM 5 could describe the weights or amounts that cocaine is typically

10:13AM 6 divided into for distribution or sale?

10:14AM 7 A Sure. In my experience, I've seen it broken down to as

10:14AM 8 small as a quarter of a gram, but the typical amount that is

10:14AM 9 purchased would be a gram and it could also be purchased as

10:14AM 10 what people call a teen, which is street slang for half of

10:14AM 11 or -- or a 16th of an ounce or an eight ball which is doubled

10:14AM 12 that which is an 8th of an ounce, and in larger quantities,

10:14AM 13 they could also be purchased.

10:14AM 14 Q How many gram are in an ounce?

10:14AM 15 A 28, just over 28.

10:14AM 16 Q And when you said the 16th of an ounce, did you say teen

10:14AM 17 with an N or team with an M, as in Mary?

10:14AM 18 A With an N as in Nancy.

10:14AM 19 Q Why these different amounts?

10:14AM 20 A Some of it's based on what the user can afford, some of

10:14AM 21 the users that have a bigger budget can purchase it in a larger

10:14AM 22 quantity and some people just can only afford so much at a

10:15AM 23 time. It depends if they're daily users versus recreational

10:15AM 24 users. And it -- and another factor could also be if they

10:15AM 25 purchased from a certain customer, or I'm sorry, a certain



10:15AM 1 seller multiple times, they may buy a larger quantity

10:15AM 2 because -- because they're already familiar -- familiar with

10:15AM 3 the quality of the product. Whereas if they're purchasing

10:15AM 4 from -- the first or second time from a particular person, they

10:15AM 5 may be a little skeptical of the quality so they want to buy a

10:15AM 6 smaller amount to test it first.

10:15AM 7 Q Specifically with reference to a one ounce or a half ounce

10:15AM 8 quantity, what type of person might purchase these larger

10:15AM 9 quantities?

10:15AM 10 A Typically, someone who purchases a half ounce and more

10:15AM 11 commonly an ounce of cocaine is also in their own right a

10:15AM 12 distributor. So if -- if a main distributor is selling an

10:15AM 13 ounce of powder cocaine to an individual, it's highly likely

10:15AM 14 that that person will then break it down to smaller quantities

10:16AM 15 to sell as a subdistributor to their own customer base in order

10:16AM 16 to turn a profit.

10:16AM 17 Q For the crack we talked about a crack rock. Are you able

10:16AM 18 to kind of give the jury an -- either a metaphor, an estimate

10:16AM 19 of what size that might be, a visual queue perhaps?

10:16AM 20 A Yes. A crack rock is typically going to be a little

10:16AM 21 smaller than your pinky fingernail. A person could purchase

10:16AM 22 like a big rock and then break it down on their own into

10:16AM 23 smaller quantities depending on the diameter of the pipe so

10:16AM 24 they could fit it into their pipe.

10:16AM 25 Q And does that translate into kind of a general weight

10:16AM 1 range?

10:16AM 2 A Yes. A gram would kind of be on the high end for a rock

10:16AM 3 and I've -- in my experience, I've seen a lot of people

10:16AM 4 purchasing crack rocks in the quarter to third to even half

10:16AM 5 gram range.

10:16AM 6 Q Based on your review of the drug report -- drug analysis

10:17AM 7 report in this case, were the rocks and half rocks within that

10:17AM 8 weight range that you just described?

10:17AM 9 A They were.

10:17AM 10 Q Okay. I'd like to talk specifically about the weights

10:17AM 11 that were seized in this case.

10:17AM 12 MS. PERLMUTTER: If we could, let's see, turn to

10:17AM 13 Exhibit 16, page two. Permission to publish, Your Honor.

10:17AM 14 THE COURT: Yes, go ahead.

10:17AM 15 BY MS. PERLMUTTER:

10:17AM 16 Q So on page two, I want to focus just on the cocaine, the

10:17AM 17 cocaine hydrochloride as it's listed. Could you describe

10:17AM 18 generally the amount that was weighed from these Ziploc bags?

10:17AM 19 A Yes. Did you -- did you say the cocaine hydrochloride

10:18AM 20 was --

10:18AM 21 Q Yes, the cocaine hydrochloride, please.

10:18AM 22 A So these amounts that are listed on this particular

10:18AM 23 portion of the report are generally within the range of what a

10:18AM 24 gram customer would purchase. In other words, it's not exactly

10:18AM 25 to the thousandth of a gram, an actual full gram, but because

10:18AM 1 of the bag weight and visually they all appear to be within the  
10:18AM 2 range of what someone would look at and say, oh, this is a  
10:18AM 3 gram.

10:18AM 4 Q If we could turn to page 3, and I want to direct your  
10:18AM 5 attention to the analysis of the cocaine hydrochloride on this  
10:18AM 6 page. Let's start with the first one. Let me see if I can  
10:18AM 7 write on this for you to direct your attention. Okay. So  
10:18AM 8 let's start with this one. How much does this particular bag  
10:18AM 9 contain?

10:18AM 10 A It says it contains 27.006 grams of actual product. So  
10:19AM 11 it's definitely within a range of what a customer would expect  
10:19AM 12 when they're purchasing an ounce because an ounce is 28.35 but  
10:19AM 13 when you factor in the weight the bag, the weight listed on the  
10:19AM 14 report is without the bag.

10:19AM 15 Q And does that relate to the potential subdistributor that  
10:19AM 16 you discussed?

10:19AM 17 A It is.

10:19AM 18 Q Okay. And what amount -- these next three items,  
10:19AM 19 what's -- what's significant about the amounts related to these  
10:19AM 20 items?

10:19AM 21 A These are indicative of amounts that are packaged for --  
10:19AM 22 for sale at the half-ounce level. So a typical buyer would  
10:19AM 23 visually look at that bag and expect that they're purchasing a  
10:19AM 24 half ounce of cocaine.

10:19AM 25 Q Okay. And if we could turn to, let's see, page four,

10:19AM 1 please. Oh, am I on page four? Or excuse me, let me clear

10:20AM 2 this. I don't see the clear button. Oh, there we go. Okay.

10:20AM 3 So specifically on page four, the first item and the

10:20AM 4 second item and the third item. What's significant about the

10:20AM 5 weights with these three items?

10:20AM 6 A These are weights that I referenced earlier in my

10:20AM 7 testimony. The first item that says 3.440 grams is very close

10:20AM 8 in weight to what's referred to as an eight ball or an 8th of

10:20AM 9 an ounce of cocaine. An eight ball would -- if it was in

10:20AM 10 exact, it would be about 3.54 but this visually would be the

11 expectation of someone's -- I'm sorry.

12 THE COURT REPORTER: Excuse me, I need you to slow

13 down.

14 THE WITNESS: Yes, ma'am.

15 THE COURT REPORTER: Okay. So an eight ball, if

16 it's -- if it was an exact something, something 3 point

17 something. Do you want to say that again?

18 THE WITNESS: Yes, ma'am.

10:21AM 19 If it was an exact eight ball, it would be

10:21AM 20 approximately 3.54 grams, and this being 3.440 grams is what

10:21AM 21 one would expect when they're purchasing an eight ball of

10:21AM 22 powder cocaine.

10:21AM 23 BY MS. PERLMUTTER:

10:21AM 24 Q And at the bottom here, you see the total net weight?

10:21AM 25 A Yes.



10:21AM 1 Q Related to -- let's start with cocaine. Approximately how  
10:21AM 2 many ounces is 83.686 grams?  
10:21AM 3 A Approximately three ounces.  
10:21AM 4 Q And based on your training and experience, is the -- is  
10:22AM 5 someone when has three ounces of cocaine is that consistent  
10:22AM 6 with distribution or is it consistent with user quantities?  
10:22AM 7 A That quantity of cocaine is definitely consistent with  
10:22AM 8 distribution.  
10:22AM 9 Q In your experience in the cocaine investigations and  
10:22AM 10 prosecutions that you've done, have you ever determined that  
10:22AM 11 someone who has three ounces of cocaine is not a distributor?  
10:22AM 12 A I have not.  
10:22AM 13 Q Are these amounts that we looked at exact measurements?  
10:22AM 14 A They appear to be based off of laboratory reports so...  
10:22AM 15 Q Okay. Let me -- let me clarify that question. Let's take  
10:22AM 16 a look, for example, at these two items that I've characterized  
10:22AM 17 here. The 1.786 grams and the 1.74 grams. Was that what you  
10:22AM 18 referred to as the teen?  
10:23AM 19 A That's correct.  
10:23AM 20 Q Okay. Or the 16th of an ounce?  
10:23AM 21 A Yes, ma'am.  
10:23AM 22 Q Is that also referred to as an half an eight ball?  
10:23AM 23 A Yes.  
10:23AM 24 Q And are the two teens exact measurements between each  
10:23AM 25 other?

10:23AM 1 A They're not -- they were not exact.

10:23AM 2 Q Okay. And based on your training and experience, how were  
10:23AM 3 these amounts determined?

10:23AM 4 A Based on my training and experience, these amounts were  
10:23AM 5 based on what the person who was weighing or breaking down the  
10:23AM 6 larger amounts into smaller amounts, when they placed it from  
10:23AM 7 the larger bag or source to the smaller bag that was recovered.  
10:23AM 8 It's typical that someone who's used to visually seeing certain  
10:23AM 9 amounts for distribution or for sale would not use a scale, and  
10:23AM 10 one of the explanations for the weights not being exact for the  
10:24AM 11 quantities provided or projected is because they can eyeball it  
10:24AM 12 or visually confirm that it's close enough. And not use a  
10:24AM 13 scale for breaking them down into smaller amounts.

10:24AM 14 Q Okay. Based on your review of the evidence seized in the  
10:24AM 15 warrant, was there a scale found?

10:24AM 16 A Not that I've seen.

10:24AM 17 Q Okay. Is there a term for not using a scale that you're  
10:24AM 18 familiar with?

10:24AM 19 A Just eyeballing it.

10:24AM 20 MS. PERLMUTTER: Okay. We can take this exhibit off,  
10:24AM 21 please.

10:24AM 22 BY MS. PERLMUTTER:

10:24AM 23 Q And the total net weight of the cocaine at 86 --  
10:24AM 24 83.686 grams, approximately how many sessions would that be?

10:24AM 25 A If the average user, for example, was to do a gram per use

10:25AM 1 or per session, that could equate or amount to 83 separate

10:25AM 2 sessions, give or take.

10:25AM 3 Q So a gram per session about?

10:25AM 4 A Yes.

10:25AM 5 Q Approximately. And for the crack, there were

10:25AM 6 approximately four rocks total? Two rocks and two broken into

10:25AM 7 half rocks?

10:25AM 8 A Yes.

10:25AM 9 Q Okay. And would that in your training and experience

10:25AM 10 involve multiple sessions as well?

10:25AM 11 A Yes. I would say that most crack pipes that I've seen in

10:25AM 12 my years of experience are not wide enough to take that size of

10:25AM 13 a rock and so those rocks that we view in the photograph would

10:25AM 14 be broken down into even smaller amounts or smaller increments

10:25AM 15 prior to them being smoked.

10:25AM 16 Q Does the fact that multiple different quantities were

10:25AM 17 found together in the seizure tell you anything about the

10:25AM 18 person who possessed them?

10:25AM 19 A Yes. That's indicative of someone who has certain

10:26AM 20 customers that want certain amounts. So it wouldn't be that

10:26AM 21 one person is dealing with one particular customer. They have

10:26AM 22 different customers who seek different amounts for their own

10:26AM 23 specific reasons.

10:26AM 24 Q I'd like to turn to packaging. Is the drug packaging here

10:26AM 25 significant?

10:26AM 1 A Yes.

10:26AM 2 Q And is it consistent with distribution or with user -- a  
10:26AM 3 single user?

10:26AM 4 A Definitely with distribution.

10:26AM 5 Q And why?

10:26AM 6 A Because the packets were broken down into several one-gram  
10:26AM 7 sizes and then there were multiple teen or 16th sizes, and then  
10:26AM 8 there was an eight ball, there were half-ounce quantities and  
10:26AM 9 ounce quantities, so there was a large range of different sizes  
10:26AM 10 and quantities already broken down into various size bags for  
10:27AM 11 that purpose.

10:27AM 12 Q Do you know the total number of bags that were seized as  
10:27AM 13 part of the search of the car of the cocaine and cocaine base?

10:27AM 14 A Of the cocaine base, I believe there were four bags.

10:27AM 15 Q Okay. And for the cocaine, do you recall the total number  
10:27AM 16 of bags that were seized?

10:27AM 17 A I believe it was in excess of ten.

10:27AM 18 Q Okay. And if it were 14, for example, does that suggest  
10:27AM 19 anything to you about distribution or personal use based on  
10:27AM 20 your training and experience?

10:27AM 21 A Yes. It's very inconsistent with personal use for the  
10:27AM 22 reasons stated. It's more consistent with distribution for  
10:27AM 23 sure.

10:27AM 24 Q Okay. Let's turn to cost and money. You spent some time  
10:27AM 25 researching at the law enforcement databases a cost of cocaine



10:28AM 1 and cocaine base in Maui; is that fair to say?

10:28AM 2 A It is.

10:28AM 3 Q Okay. And did you also talk to law enforcement on Maui

10:28AM 4 related to cost of cocaine and cocaine base?

10:28AM 5 A Yes, ma'am.

10:28AM 6 Q Do you also have experience personally in your role as a

10:28AM 7 special agent regarding the cost of cocaine and cocaine base?

10:28AM 8 A I do.

10:28AM 9 Q Okay. And specifically did you look at cost related to

10:28AM 10 Maui?

10:28AM 11 A I did.

10:28AM 12 Q Okay. And did you also narrow the time frame?

10:28AM 13 A Yes. In my conversations with law enforcement colleagues,

10:28AM 14 it was narrowed down for the specific time frame and location.

10:28AM 15 Q And why is it important to narrow that time frame?

10:28AM 16 A One example would be during the COVID pandemic because of

10:28AM 17 supply chain issues, certain types of drugs fluctuated in price

10:28AM 18 because of where -- things were warehoused coming over the

10:28AM 19 Mexico border and how it was able to get to Hawaii and the

10:28AM 20 limitations involved. And also because certain islands have

10:29AM 21 differences in price, although they're fairly close, there are

10:29AM 22 differences just because of the availability and other -- other

10:29AM 23 less important factors.

10:29AM 24 Q Is that why it was significant to focus on Maui?

10:29AM 25 A Yes, ma'am.

10:29AM 1 Q Okay. And what was the time frame that you actually  
10:29AM 2 narrowed down in on?

10:29AM 3 A It was in the year 2020 right at the beginning of the --  
10:29AM 4 in the first half of 2020.

10:29AM 5 MS. PERLMUTTER: If we could turn to Exhibit 11, page  
10:29AM 6 23. Permission to publish, Your Honor.

10:29AM 7 THE COURT: Yes, go ahead.

10:29AM 8 BY MS. PERLMUTTER:

10:29AM 9 Q Okay. This is the same picture we looked at just for  
10:29AM 10 purposes of reference. If we could start with the cocaine  
10:29AM 11 prices. For a gram of cocaine, approximately how much would  
10:29AM 12 that range be in March of 2020 on Maui?

10:30AM 13 A There were some fluctuations but generally it was in the  
10:30AM 14 hundred to \$150, maybe \$160 range.

10:30AM 15 Q Okay. And although we're not looking at it in this  
10:30AM 16 picture, what about the one-ounce quantities? What would be  
10:30AM 17 the range of price be for that?

10:30AM 18 A Around that time frame, the general price range was  
10:30AM 19 approximately 1,500 to possibly \$2,000 for an ounce.

10:30AM 20 Q And then what about the half-ounce quantities?

10:30AM 21 A The half-ounce quantity would go for approximately 800 to  
10:30AM 22 a thousand and maybe a little bit more depending on the  
10:30AM 23 availability.

10:30AM 24 Q And are these wholesale or retail-type prices?

10:30AM 25 A At the half ounce to ounce level, those can be considered

10:31AM 1 wholesale prices because they could be broken down even further  
10:31AM 2 for a final end user or the retail person.

10:31AM 3 Q Okay. When I say wholesale versus retail, could you  
10:31AM 4 describe to the jury in your words what -- what you mean by  
10:31AM 5 that description?

10:31AM 6 A I define retail as broken down to the lowest amount that a  
10:31AM 7 person would use or purchase to consume themselves, and the  
10:31AM 8 wholesale level would be the intent for selling a larger amount  
10:31AM 9 with the expectation that it would be broken down into even  
10:31AM 10 smaller amounts for additional sale or distribution.

10:31AM 11 Q How does the cost of cocaine compare to other illegal  
10:31AM 12 drugs sold in Hawaii?

10:31AM 13 A Cocaine is higher on the spectrum. Whereas  
10:31AM 14 methamphetamine currently is on the low end the of drug  
10:31AM 15 spectrum. Cocaine and heroin would be on the higher end of the  
10:31AM 16 wholesale and retail spectrum as far as illegal drugs here.

10:31AM 17 Q Okay. Also in this picture is the cocaine base or the  
10:32AM 18 crack. Could you describe what the prices generally looked  
10:32AM 19 like in March of 2020 in Maui for crack?

10:32AM 20 A Yes. Because there is a smaller consumer market for this  
10:32AM 21 form of cocaine, crack cocaine, there wasn't a lot of research  
10:32AM 22 that could be done. But in speaking with colleagues and -- and  
10:32AM 23 based on my experience with similar islands and what it looked  
10:32AM 24 like, the price for the rock cocaine would land at about 60 to  
10:32AM 25 \$120 a gram and depending on the purity or the time frame and a

10:32AM 1 full gram was purchased versus a smaller amount.

10:32AM 2 Q In looking at this picture, these appear to be packaged in  
10:33AM 3 clear plastic baggies. Is there anything significant about  
10:33AM 4 that plastic baggy in your training and experience for the  
10:33AM 5 distribution of drugs?

10:33AM 6 A Yes. They are readily available, very commonly used and  
10:33AM 7 the customer has a very easy way of visually seeing what  
10:33AM 8 they're buying.

10:33AM 9 Q If we could turn to Exhibit 16, page --

10:33AM 10 THE COURT: How much more do you have, Counsel, on  
10:33AM 11 direct?

10:33AM 12 MS. PERLMUTTER: I'm sorry, Your Honor.

10:33AM 13 THE COURT: How much more do you have on direct?

10:33AM 14 MS. PERLMUTTER: I would say about ten to 15 minutes.

10:33AM 15 THE COURT: All right. Then let's go ahead and take  
10:33AM 16 our first morning break at this point. As we go to break, I'll  
10:33AM 17 remind our jury to please refrain from discussing the substance  
10:33AM 18 of this case with anyone including each other until I advise  
10:33AM 19 you otherwise; refrain from accessing any media or other  
10:33AM 20 accounts of this case that may be out there; and finally do not  
10:33AM 21 conduct any independent investigation into the facts,  
10:34AM 22 circumstances or persons involved. Let's take about a  
10:34AM 23 15-minute recess. And we will resume at about 10:50 if the  
10:34AM 24 lawyers would please remain.

10:34AM 25 (At 10:34 a.m., the jury was excused, and the



10:34AM 1 following proceedings were held:)

10:35AM 2 THE COURT: Okay. The record should reflect the  
10:35AM 3 departure of our jury and -- you may step down, sir, if you  
10:35AM 4 wish.

10:35AM 5 I want to give the lawyers and others in the court the  
10:35AM 6 chance to take the break -- a break as well. But I'd like to  
10:35AM 7 resume without the jury once you have a chance to do that to  
10:35AM 8 discuss jury instructions and the verdict form that the court  
10:35AM 9 circulated last week. We have received two short responses by  
10:35AM 10 the defense side. One yesterday filed last evening and then  
10:35AM 11 one this morning. I don't know if counsel for the government  
10:35AM 12 has seen both of those submissions.

10:35AM 13 MS. PERLMUTTER: We printed them out just before we  
10:35AM 14 arrived in court this morning and I did have a chance to  
10:35AM 15 briefly review them and I am prepared to discuss them.

10:35AM 16 THE COURT: All right. So I'll give you a chance to  
10:35AM 17 take a break and then I'll ask Ms. Elkington to get us back  
10:36AM 18 together just a few minutes before the jury comes back.

10:36AM 19 (Proceedings were recessed at 10:36 a.m. to 10:48  
10:36AM 20 a.m.)

10:48AM 21 (Open court out of the presence of the jury.)

10:48AM 22 THE COURT: All right. So the jury has not yet  
10:48AM 23 reentered back from our first morning break but the lawyers are  
10:48AM 24 here as is their client and client representatives. So we are  
10:48AM 25 getting close to the end. From my list of exhibit -- excuse

10:48AM 1 me, witnesses Special Agent Faulkner is, in fact, the  
10:48AM 2 government's last witness. Is there anyone that the government  
10:48AM 3 intends to call thereafter?

10:48AM 4 MS. PERLMUTTER: No. Special Agent Faulkner, we will  
10:48AM 5 rest after his testimony completes.

10:48AM 6 THE COURT: All right. Mr. Mottl, does the defense  
10:48AM 7 intend to call anyone in its case in chief.

10:48AM 8 MR. MOTTTL: Yes. Yes. We have three witnesses and  
10:48AM 9 they'll be moderate duration. I don't know what  
10:49AM 10 cross-examination will be, but they're not going to be as long.

10:49AM 11 THE COURT: Okay. In light of that, well, we will see  
10:49AM 12 how long the defense case takes. I have some idea from what  
10:49AM 13 Ms. Perlmutter already said with respect to how long  
10:49AM 14 Mr. Faulkner is expected to take but it very well could be the  
10:49AM 15 case that we find ourselves at -- at the point of closing.

10:49AM 16 Are both sides ready to do that today?

10:49AM 17 MS. OLSON: Yes, Your Honor.

10:49AM 18 THE COURT: Mr. Mottl?

10:49AM 19 MR. MOTTTL: I could, Your Honor, yes.

10:49AM 20 THE COURT: All right. All right. Well, we'll see  
10:49AM 21 where that take us. We'll need I'm guessing at least an hour  
10:49AM 22 or so for closings to allow both sides a reasonable amount  
10:49AM 23 of -- of time. So we'll see where we are in the evidence come  
10:49AM 24 12:30ish. We are scheduled only to continue until 1:30 today.  
10:49AM 25 So if we do not have sufficient time to close, we can wrap

10:49AM 1 today with the evidence and if possibly the instructions as  
10:50AM 2 well and then we can close first thing tomorrow. We'll see  
10:50AM 3 where we are with that.

10:50AM 4 In preparation for instructing the jury, I'd ask you  
10:50AM 5 all to be prepared to discuss the jury instructions and verdict  
10:50AM 6 form. I would say that the version of the verdict form and  
10:50AM 7 jury instructions that the Court proposed in its filings last  
10:50AM 8 Friday were very similar to the joint proposed set that the  
10:50AM 9 government filed under its caption prior to trial.

10:50AM 10 And the reason for that is well, one, I think more or  
10:50AM 11 less it contains an accurate statement of the law and presents  
10:50AM 12 the issues that the jury is required to -- to address. But in  
10:50AM 13 addition to that, there was no competing version of anything  
10:50AM 14 that I had received from the defense and that is until last  
10:51AM 15 night. Last night the defense filed input into three issues  
10:51AM 16 and then modified that in its filing this morning before the  
10:51AM 17 start of trial.

10:51AM 18 In last night's version, the defense proposed  
10:51AM 19 different instructions for Count 1, different instructions for  
10:51AM 20 entrapment and then suggested a lesser included offense of  
10:51AM 21 possession, simple possession of cocaine in addition to the  
10:51AM 22 instruction on Count 2 that was proposed by the -- by the  
10:51AM 23 government.

10:51AM 24 In this morning's filing, the lesser included  
10:51AM 25 suggestion from the defense was omitted and what to make of

10:51AM 1 that I'm not -- not certain. So that's -- let's just start  
10:51AM 2 with that.

10:51AM 3 Mr. Mottl, the defense is suggesting including the  
10:52AM 4 lesser included offense instruction that you proposed in your  
10:52AM 5 filing last evening, or has it had a change of heart in light  
10:52AM 6 of the filing this morning that did not include such an  
10:52AM 7 instruction?

10:52AM 8 MR. MOTTLE: I intend the statement this morning to set  
10:52AM 9 out the -- the law on the basis for the -- the suggested  
10:52AM 10 instructions for Count 1 and Count 2. I -- I didn't -- I  
10:52AM 11 thought the lesser included was pretty straightforward. I  
10:52AM 12 cited federal law and essentially it was simple possession. So  
10:52AM 13 my omission there wasn't indicated that we were abandoning  
10:52AM 14 that. We believe it's still appropriate and we would request  
10:52AM 15 that.

10:52AM 16 THE COURT: Okay. So let's -- since we're on that  
10:52AM 17 subject, did the government have a response to including the --  
10:53AM 18 I think it's 844?

10:53AM 19 MS. PERLMUTTER: Yes, Your Honor. First of all, I do  
10:53AM 20 want to point out that Mr. Mottl in -- sometime in May sent the  
10:53AM 21 government an email after we filed our jury instructions  
10:53AM 22 regarding his potential proposition of a lesser included  
10:53AM 23 offense. I responded to that email on May 22nd and included a  
10:53AM 24 proposal for a lesser included instruction. If he were so  
10:53AM 25 inclined to want to elect that and that he could file it and



10:53AM 1 never responded to me. I did not have time this morning to  
10:53AM 2 file anything in response to the 10 p.m. submission; however, I  
10:53AM 3 have printed out the government's proposal and it tracks the  
10:53AM 4 Ninth Circuit model jury instruction 3.14 which is the lesser  
10:53AM 5 included offense and also cites to Ninth Circuit case law  
10:53AM 6 specifically United States versus Pineda-Doval 614 F.3D 1019  
10:54AM 7 from 2010. That says, "When a lesser included offense  
10:54AM 8 instruction is appropriate, a defendant has the right to elect  
10:54AM 9 whether all or only some of the jurors must not be convinced  
10:54AM 10 beyond a reasonable doubt of guilt of the greater offense."  
10:54AM 11 I take that to mean that it is the defendant's right  
10:54AM 12 to elect if it does apply that it be given. The government  
10:54AM 13 would not oppose giving the lesser included offense instruction  
10:54AM 14 under those circumstances but does not agree to the defendant's  
10:54AM 15 proposal and would like to follow the model jury instruction  
10:54AM 16 related to 21 U.S.C. 844(a) that is simple possession of a  
10:54AM 17 controlled substance.  
10:54AM 18 THE COURT: I want to know why a lesser included  
10:54AM 19 offense needs to be given whether you agree with it or not.  
10:54AM 20 Why it triggered here?  
10:54AM 21 MS. PERLMUTTER: My understanding and quite frankly,  
10:54AM 22 Your Honor, I haven't been able to do more investigation or  
10:55AM 23 research on it is only that based on what I have in my proposal  
10:55AM 24 which is only a cite to one case and I haven't been able to  
10:55AM 25 reread that is that if a lesser included offense meets the

10:55AM 1 test. There's a test that's set forth that the elements are  
10:55AM 2 included in there, then it is the defendant's option under the  
10:55AM 3 Ninth Circuit case law to either strategically ask for that  
10:55AM 4 inclusion or not ask for that inclusion in there. I -- I mean,  
10:55AM 5 I could imagine reasons why Mr. Mottl would or would not seek a  
10:55AM 6 lesser included offense under the possession with intent to  
10:55AM 7 distribute here. But I can't say that I've done further  
10:55AM 8 research and I can't say conclusively whether that's correct or  
10:55AM 9 not. I'm solely just looking at my instruction here.

10:55AM 10 THE COURT: In the defense proposal with regard to  
10:55AM 11 simple possession, there is offered an instruction on what  
10:55AM 12 simple possession requires the jury to find. But it has --  
10:56AM 13 says nothing. The defense submission says nothing about when  
10:56AM 14 the instruction ought to be given. Just what the instruction  
10:56AM 15 should say, if it were to be given.

10:56AM 16 My understanding is not the defendant simply gets to  
10:56AM 17 choose and dictate that the lesser included ought to be given  
10:56AM 18 whenever -- whenever they decide it out to be given. That's  
10:56AM 19 not the defense election to make. The -- I don't think there  
10:56AM 20 is any issue and I don't quarrel with simple possession under  
10:56AM 21 844 being a lesser included offense of 841, the possession with  
10:56AM 22 the intent to distribute. It sure seems like it -- it would  
10:56AM 23 be, but what I think triggers the issuance of a lesser included  
10:57AM 24 offense instruction in the first place is whether a rational  
10:57AM 25 jury could only find for simple possession. And not for the

10:57AM 1 crime that Mr. Cummings has been charged with in Count 2 of the  
10:57AM 2 indictment. And based on the evidence that I've heard thus  
10:57AM 3 far, particularly Special Agent Faulkner's testimony that we  
10:57AM 4 heard just before the break, I don't see how a rational jury  
10:57AM 5 could do that.

10:57AM 6 Now, I know there's cross-examination to come and  
10:57AM 7 Special Agent Faulkner has not stepped down from the stand, but  
10:57AM 8 unless something changes drastically in his testimony or in one  
10:57AM 9 of the three witnesses that Mr. Mottl says he intends to call  
10:57AM 10 in the defense case, the identities of which I am unaware, I  
10:58AM 11 don't see how a jury could do that.

10:58AM 12 MS. PERLMUTTER: I agree, Your Honor. I do believe  
10:58AM 13 the case law says if a rational jury could not find -- if there  
10:58AM 14 is evidence in the record that a rational jury could not find  
10:58AM 15 beyond a reasonable doubt the greater offense which is  
10:58AM 16 possession with the intent to distribute, then the simple  
10:58AM 17 possession of the lesser offense might be appropriate. But if  
10:58AM 18 that's not -- if there is no evidence that a rational jury  
10:58AM 19 could not find then -- then it's at the discretion of Your  
10:58AM 20 Honor but also then it is not necessarily appropriate. I -- I  
10:58AM 21 would agree with that summation of the law.

10:58AM 22 THE COURT: Mr. Mottl, thoughts.

10:58AM 23 MR. MOTTL: I was -- I was thinking that the -- I  
10:58AM 24 recall reviewing the proposed instruction that the -- that  
10:58AM 25 was -- that was I guess submitted in earlier, and I would

10:59AM 1 concur. That was a Ninth Circuit. I originally considered  
10:59AM 2 that. But -- but I think the Court -- I can understand the  
10:59AM 3 Court's position but request that it just wait to see what  
10:59AM 4 comes out on cross-examination and make the decision based on  
10:59AM 5 that. I -- if -- yeah, I -- I think.

10:59AM 6 THE COURT: All right. Well, my -- my -- my decision  
10:59AM 7 as it stands with the evidence right now is not to give the  
10:59AM 8 lesser included offense requested by the defense in whatever  
10:59AM 9 form because I do not think it's warranted in light of my  
10:59AM 10 understanding of what triggers giving a lesser included offense  
10:59AM 11 in the first place. If you wish to renew the request for  
10:59AM 12 simple possession instruction, you may do so after the close of  
11:00AM 13 the evidence. But that's where it is now. If you do not renew  
11:00AM 14 the request, then the court's ruling will stand.

11:00AM 15 With respect to the other two issues, the language of  
11:00AM 16 the Count 1 instruction and the instruction that the defendant  
11:00AM 17 has proposed with respect to entrapment. Let me take the  
11:00AM 18 entrapment issue first.

11:00AM 19 The defense urges an entrapment instruction based on  
11:00AM 20 Hawaii state law and not the federal standard with respect to  
11:00AM 21 entrapment. It seems like the federal standard is in some ways  
11:00AM 22 beneficial to the defendant in the sense that the burden of  
11:00AM 23 proof is different, at least in terms of what has been proposed  
11:00AM 24 probative to me. The defense State of Hawaii instruction  
11:00AM 25 places the burden of entrapment on the defendant. Whereas, the



11:01AM 1 government's entrapment instruction places the burden beyond a  
11:01AM 2 reasonable doubt on the government to prove that it wasn't  
11:01AM 3 entrapment.

11:01AM 4           Notwithstanding, that perceived benefit to the  
11:01AM 5 defendant, the defendant has proposed the Hawaii instruction.  
11:01AM 6 I'm not certain why that is, perhaps it's because it's  
11:01AM 7 available on demand as opposed to the federal instruction which  
11:01AM 8 is available only upon an initial prima facie showing.

11:01AM 9           My inclination is to give the entrapment instruction  
11:01AM 10 using the language proposed by the government so that is my  
11:02AM 11 tentative inclination. If anyone wants to try to change my  
11:02AM 12 mind, feel free. Now is your chance.

11:02AM 13           MS. PERLMUTTER: Your Honor, the government -- if --  
11:02AM 14 if the Court in its discretion determines that the evidence has  
11:02AM 15 been sufficient to make a prima facie showing on both  
11:02AM 16 predisposition and inducement that's required for the  
11:02AM 17 instruction for entrapment, the government will not then object  
11:02AM 18 to that court's determination. However, the government does  
11:02AM 19 agree that the model instruction in the Ninth Circuit's model  
11:02AM 20 which the court has incorporated is the appropriate instruction  
11:02AM 21 and the federal law should be followed.

11:02AM 22           THE COURT: So my inclination is to give it and the  
11:02AM 23 reason is although the defense has not presented any evidence  
11:02AM 24 in its case in chief, I think a fair reading of the text  
11:03AM 25 message exchange between Kiana or Officer Surina on one hand

11:03AM 1 and Mr. Cummings on the other, you could -- a reasonable jury  
11:03AM 2 could find the requisite elements of entrapment to be present  
11:03AM 3 based solely on that, and I think it's justifiable then to give  
11:03AM 4 the entrapment instruction. I -- I have been given no  
11:03AM 5 authority for why that instruction ought to take the form of  
11:03AM 6 the Hawaii state version just like the lesser included offense,  
11:03AM 7 the language of the proposed instruction on entrapment was  
11:03AM 8 simply presented by the defense with -- without much in terms  
11:03AM 9 of why Hawaii and not federal standards should apply.

11:03AM 10 There was a case blurb that was quoted from by the  
11:04AM 11 defense and we've taken a look at that case blurb. It does not  
11:04AM 12 hold that Hawaii state law trumps federal law with respect to  
11:04AM 13 giving the entrapment instruction in that form. And so I  
11:04AM 14 decline to do that.

11:04AM 15 Mr. Mottl, do you wish to be heard any further on  
11:04AM 16 that?

11:04AM 17 MR. MOTTL: No, Your Honor. It's clear and -- and we  
11:04AM 18 just stand by what we submitted. So nothing further.

11:04AM 19 THE COURT: All right. So that's where I stand. I  
11:04AM 20 will give the entrapment instruction in the form that was  
11:04AM 21 proposed by the government which is also the form that was set  
11:04AM 22 forth in the government's proposed set of jury instructions  
11:04AM 23 filed last week.

11:04AM 24 And then finally with respect to Count 1, there is  
11:04AM 25 some verbiage that the defense has proposed regarding the

11:04AM 1 enticement charge. Some of it, I'd say half of it, is actually  
11:05AM 2 verbatim or substantively verbatim of the proposal that the  
11:05AM 3 Court submitted which is from the parties or the government's  
11:05AM 4 filing. And in particular the latter two items, elements three  
11:05AM 5 and four I believe are virtually identical. There is some  
11:05AM 6 language in the first element of the defense proposal that's  
11:05AM 7 simply not -- not correct. Whether Mr. Cummings knowingly  
11:05AM 8 attempted to use a facility or means of interstate commerce is  
11:05AM 9 not the issue. It's not whether he attempted to use a facility  
11:05AM 10 or means. It's he used a facility or means to attempt to  
11:05AM 11 coerce. I think the word attempt is in the wrong place in --  
11:05AM 12 in item number -- number one.

11:06AM 13 I don't know. Any other thoughts from the  
11:06AM 14 government's side of things in terms of the propriety of what  
11:06AM 15 defendant has proposed versus what the government and the Court  
11:06AM 16 proposed?

11:06AM 17 MS. PERLMUTTER: The government would concur with all  
11:06AM 18 of your sentiments, Your Honor. I'd also point out that there  
11:06AM 19 is an error in the date range. The defendant's proposed  
11:06AM 20 March 14th to 16th and the date range that's charged is 13th to  
11:06AM 21 15th, and it also point out that the proposal that the  
11:06AM 22 government put forth in front of Your Honor which had case  
11:06AM 23 cites and has been the same type of instruction that was used  
11:06AM 24 in two other enticement cases in this jurisdiction which went  
11:06AM 25 up on the Ninth Circuit and were litigated, United States

11:06AM 1 versus Macapagal and United States versus Nishida is in accord  
11:06AM 2 with that. In both those jury instructions and those cases  
11:06AM 3 involved the same Hawaii Revised Statutes which the Hawaii  
11:06AM 4 Revised Statutes which was cited in the government's proposed  
11:07AM 5 instruction is based not only on the statute itself but based  
11:07AM 6 on the Hawaii proposed jury instructions. And so the  
11:07AM 7 government would submit that the defendant not only is  
11:07AM 8 factually and somewhat legally incorrect, although accurate in  
11:07AM 9 some other ways, is not the best instruction or the most  
11:07AM 10 accurate instruction to give in this case.

11:07AM 11 THE COURT: And -- and we did look at Macapagal, I'm  
11:07AM 12 not sure I'm pronouncing it correctly, but Macapagal, although  
11:07AM 13 tried by Judge Kobayashi, was my case until trial. And so I'm  
11:07AM 14 familiar with the development of the law in that case. I know  
11:07AM 15 it went up on appeal and I think it was only very recently  
11:07AM 16 ruled on by the Ninth Circuit. I don't have the -- a date but  
11:07AM 17 I -- my recollection is the advance sheet came out within the  
11:07AM 18 last 45 days, something like that.

11:07AM 19 MS. PERLMUTTER: At the oral arguments -- I -- I  
11:07AM 20 actually did the oral arguments in that case. They were last  
11:07AM 21 October. The decision came out in early 2023, and the jury  
11:08AM 22 instructions have been revised, in fact, in the Ninth Circuit  
11:08AM 23 in March 2023 based on the published decision in Macapagal.

11:08AM 24 THE COURT: Okay. Thank you for the clarification.  
11:08AM 25 The -- the passage of time is something that escapes me many



11:08AM 1 times. My inclination is I think the -- the -- the proof is in  
11:08AM 2 the pudding so to speak that the instruction that the  
11:08AM 3 government has proposed is something that this Court me  
11:08AM 4 personally but this Court generally has used in the past and is  
11:08AM 5 consistent with what it appears the Ninth Circuit is satisfied  
11:08AM 6 with when -- when this type of -- of crime has been charged.  
11:08AM 7 Specifically in the Hawaii context even. So it's even more  
11:08AM 8 drilled down than -- than a reference to the USC provision  
11:08AM 9 might indicate.

11:08AM 10 And so I -- I do think that the appropriate course  
11:08AM 11 here is to give the instruction that the circuit has  
11:08AM 12 essentially put its stamp of imprimatur on rather than trying  
11:09AM 13 to get creative in a -- on a version that the circuit hasn't  
11:09AM 14 spoken on in the past. So my inclination is not to make any  
11:09AM 15 changes to -- to the Count 1 instruction.

11:09AM 16 There was only one knit in the Count 1 instruction  
11:09AM 17 that we noticed in doing further review during the break and  
11:09AM 18 that is with respect to the reference to internet or cellular  
11:09AM 19 phones. This is element two in the Court's proposed  
11:09AM 20 instruction number 18. It reads, "Second, the defendant used a  
11:09AM 21 means or facility of interstate or foreign commerce, that is,  
11:09AM 22 the internet or a cellular phone to do so."

11:09AM 23 It's redundant because at the very end of this very  
11:09AM 24 same instruction it says, "The internet and a cellular phone  
11:09AM 25 are facilities of interstate commerce."

11:10AM 1 So we have made just so you all know and I'm not --  
11:10AM 2 it's no surprise to anyone. We're removing the reference to  
11:10AM 3 internet or cellular phone in item -- element two as redundant  
11:10AM 4 of -- of that provision on the last sentence. Other than that  
11:10AM 5 we're keeping it the way -- the way it is.

11:10AM 6 So we'll go into production then on the final verdict  
11:10AM 7 form, the final set of jury instructions so we will do that  
11:10AM 8 while we continue the examination of Special Agent Faulkner.  
11:10AM 9 And if it is the case that our time permits the court to  
11:10AM 10 instruct today, then we will -- we will get there. We will be  
11:10AM 11 ready to do that.

11:10AM 12 All right. Any other issues before we -- before we  
11:10AM 13 call the jury back in?

11:10AM 14 MS. PERLMUTTER: No other issues, Your Honor.

11:10AM 15 THE COURT: All right. Mr. Mottl, anything from the  
11:10AM 16 defense?

11:10AM 17 MR. MOTTLE: No, Your Honor.

11:10AM 18 THE COURT: All right. Then let's get the jury in,  
11:10AM 19 please.

11:10AM 20 (The following proceedings were held in open court in  
11:10AM 21 the presence of the jury:)

11:12AM 22 Our 14-member jury has returned, and when we were last  
11:12AM 23 together a few minutes ago, Special Agent Faulkner was on the  
11:12AM 24 stand and Ms. Perlmutter was in the midst of her direct  
11:12AM 25 examination.

11:12AM 1 You may continue with that now.

11:12AM 2 MS. PERLMUTTER: Thank you, Your Honor.

11:12AM 3 BY MS. PERLMUTTER:

11:12AM 4 Q Special Agent Faulkner, I'm going to just direct you back  
11:12AM 5 to the topic that we were discussing when we took the break.

11:12AM 6 We were talking about the value of the cocaine and the cocaine  
11:12AM 7 base otherwise known as crack.

11:12AM 8 MS. PERLMUTTER: And I had just asked Ms. Unten if you  
11:12AM 9 could please pull up Exhibit 16, page four.

11:12AM 10 And, Your Honor, permission to publish.

11:12AM 11 THE COURT: Yes, you may.

11:12AM 12 MS. PERLMUTTER: Thank you.

11:13AM 13 And please if you could highlight or blow up the last  
11:13AM 14 third of that exhibit. Thank you.

11:13AM 15 BY MS. PERLMUTTER:

11:13AM 16 Q Okay. Special Agent Faulkner, you had prior to the break  
11:13AM 17 discussed the different values around March 2020 in Maui of  
11:13AM 18 both cocaine and cocaine base in varying amounts. Now, I want  
11:13AM 19 to direct your attention to the total net weight that was  
11:13AM 20 seized from the Toyota Tacoma truck in March of 2020.

11:13AM 21 If you could look at this exhibit, you'll see that the  
11:13AM 22 cocaine hydrochloride is 83.686 grams in total. And you had  
11:13AM 23 explained I believe earlier to the jury how many ounces that  
11:13AM 24 was approximately?

11:13AM 25 A Yes. It was approximately three.

11:13AM 1 Q And essentially do you just divide 83.686 by 28 to get  
11:14AM 2 that amount?

11:14AM 3 A I just multiplied the 28.35 by three and then it would --  
11:14AM 4 it was very close to this amount here.

11:14AM 5 Q Okay. Are you able to ballpark based on the three ounces  
11:14AM 6 approximately of cocaine that was seized from the Toyota Tacoma  
11:14AM 7 how much in value that was worth around that time?

11:14AM 8 A Yes. At the wholesale level if someone was to purchase  
11:14AM 9 this amount, the value would be as much as \$2,000 times three  
11:14AM 10 which would be about \$6,000 at the retail end of things. The  
11:14AM 11 value if the gram breakdown was the amount purchased by a  
11:14AM 12 consumer at the \$120 range it would be in the ballpark of in  
11:15AM 13 excess of \$8,500.

11:15AM 14 Q What about the next line there, the cocaine base  
11:15AM 15 approximately the 3.488 grams? Can you approximate what that  
11:15AM 16 value might be as well?

11:15AM 17 A Yes. Approximating that the purchased amount would be  
11:15AM 18 broken down to the gram level, the value could be -- could be  
11:15AM 19 in the neighborhood of \$400.

11:15AM 20 MS. PERLMUTTER: All right. If you can clear this  
11:15AM 21 exhibit, please.

11:15AM 22 BY MS. PERLMUTTER:

11:15AM 23 Q Okay. I'd like to move to the last topic that we're going  
11:15AM 24 to -- I'll address today about organization of the items that  
11:15AM 25 were seized in Toyota Tacoma. Is the -- based on your review



11:15AM 1 of the evidence, are you aware that the cocaine and the cocaine  
11:15AM 2 base were seized inside the truck?

11:16AM 3 A Yes, I am.

11:16AM 4 Q Okay. Is there anything significant about the location in  
11:16AM 5 a vehicle that's -- that strikes you pursuant to a -- to  
11:16AM 6 forming your opinion on distribution?

11:16AM 7 A Yes. Two things strike me. The fact that the vehicle was  
11:16AM 8 used makes the drug distribution easier because it's a more  
11:16AM 9 mobile way of getting drugs to their desired locations. But  
11:16AM 10 even more important than that within the vehicle based on the  
11:16AM 11 photos I examined, the drugs were concealed within items that  
11:16AM 12 were in or around the center console area. And as somebody  
11:16AM 13 drives a vehicle and distributes, it's -- it's common or normal  
11:16AM 14 that they like to have their items very close to where they can  
11:16AM 15 reach them as they're transacting with people and at the same  
11:16AM 16 time in a concealed location. So if they're pulled over by law  
11:16AM 17 enforcement, it's not something that the police officer could  
11:16AM 18 see visibly at that time.

11:16AM 19 MS. PERLMUTTER: If you could pull up Exhibit 11. I  
11:17AM 20 believe page 11.

11:17AM 21 And Permission to publish, Your Honor.

11:17AM 22 THE COURT: Yes, you may.

11:17AM 23 BY MS. PERLMUTTER:

11:17AM 24 Q Okay. So you just talked about the significance of the  
11:17AM 25 center console itself. Is there anything significant about the

11:17AM 1 items, the cocaine and the cocaine base, that were actually  
11:17AM 2 found in that black bag?

11:17AM 3 A Yes. A black bag is a -- or a bag. It doesn't really  
11:17AM 4 matter what the color is but a bag like that is very mobile and  
11:17AM 5 when someone gets out of their vehicle if they're carrying a  
11:17AM 6 fanny bag or a purse or a satchel, it's something that is a  
11:17AM 7 preferred method where someone could leave the vehicle with  
11:17AM 8 product, interact with someone or sell something or receive  
11:17AM 9 something, and then go back to their vehicle. It's just a  
11:17AM 10 small bag with multiple compartments that have -- it -- it's  
11:17AM 11 just a very popular item.

11:17AM 12 Q If you could turn to the next page, please. What about  
11:17AM 13 the fact that there was money contained in the same black bag  
11:17AM 14 where the cocaine and the cocaine base were found?

11:18AM 15 A That's indicative that a separate compartment was used to  
11:18AM 16 hold the money after selling. If money is owed to a buyer,  
11:18AM 17 oftentimes they'll keep it in the same spot as the product. So  
11:18AM 18 they have control over everything that is with them so  
11:18AM 19 everything is kind of easy to access and keep track of.

11:18AM 20 Q If you could turn to page 21, please. Okay. Take a look  
11:18AM 21 at this exhibit. This is -- in the black bag, you see the  
11:18AM 22 black bag in the upper right-hand corner, yes, and the metal  
11:18AM 23 tin on the left-hand side. There are four bags of cocaine. Is  
11:18AM 24 that what you observed as well?

11:18AM 25 A Yes, it is.

11:18AM 1 Q And now let's turn to page 22. And you see that this is a  
11:18AM 2 separate container in the black bag?

11:18AM 3 A It is.

11:19AM 4 Q Okay. And page 23. And the items contained in that  
11:19AM 5 separate container, you see the container on the become  
11:19AM 6 left-hand corner?

11:19AM 7 A I do.

11:19AM 8 Q And do you observe the crack rocks in that container?

11:19AM 9 A In page 23, I observed the crack rocks on the seat next to  
11:19AM 10 the portion of the container that I just saw on page 22.

11:19AM 11 Q And we talked about amounts earlier, do you observe that  
11:19AM 12 the bags of cocaine on the right side are the approximate  
11:19AM 13 one-gram amounts?

11:19AM 14 A Yes.

11:19AM 15 Q Okay. Let's go back to page 22 and 21. Are these the  
11:19AM 16 one-gram amounts or are they bigger amounts than that?

11:19AM 17 A They are slightly bigger.

11:19AM 18 Q And is this the eight ball and teen amounts you referred  
11:19AM 19 to before?

11:19AM 20 A Yes, they do appear to be that.

11:19AM 21 Q Is there anything significant to you why the eight ball  
11:19AM 22 and teen amounts would be separated in a different container  
11:20AM 23 than the gram amounts?

11:20AM 24 A Yes. Some -- a lot of times drug distributors like to  
11:20AM 25 have their amounts segregated so that when they pull up to meet

11:20AM 1 with a customer, the goal is to have a -- a quick transaction  
11:20AM 2 so they're not fumbling around and trying to figure out what  
11:20AM 3 amounts are in what area of the -- of the bag or the center  
11:20AM 4 console or what have you. So this would be a -- a fair example  
11:20AM 5 of this demonstrating that the larger amounts that were still  
11:20AM 6 meant for customers were separate and apart from the smaller  
11:20AM 7 gram amounts. And that also is consistent with the absence of  
11:20AM 8 a scale.

11:20AM 9 Q If we could turn to page 27, please. Now, in reviewing  
11:20AM 10 the evidence, are you aware that in the center console besides  
11:20AM 11 the black bag there was also cocaine found in an iPhone box?

11:20AM 12 A Yes, I am.

11:20AM 13 Q Okay. And is this a picture you've reviewed of the  
11:21AM 14 cocaine in the iPhone box?

11:21AM 15 A It is.

11:21AM 16 Q You also reviewed the physical drug exhibit of the cocaine  
11:21AM 17 found in the iPhone box?

11:21AM 18 A I have.

11:21AM 19 Q And are the amounts in the iPhone box greater than the  
11:21AM 20 amounts that were found in the black bag?

11:21AM 21 A Yes, they are.

11:21AM 22 Q Okay. Are these the one ounce and half-ounce amounts?

11:21AM 23 A Yes, ma'am.

11:21AM 24 Q If you could turn to maybe page 28. Let's see what that  
11:21AM 25 is. And are these the four bags laid out?



11:21AM 1 A Yes.

11:21AM 2 Q And is there anything significant about distribution about  
11:21AM 3 the separation between the black bag drugs and the iPhone box  
11:21AM 4 drugs that stands out to you?

11:21AM 5 A Yes. So these, obviously as I explained earlier, are the  
11:21AM 6 larger quantities and these are based on my opinion quantities  
11:21AM 7 that would have likely been given or sold to someone who was  
11:21AM 8 going to further break them down and distribute -- distribute  
11:21AM 9 them to other customers.

11:21AM 10 Moving it -- taking it a step further, the larger bags  
11:22AM 11 that were in an iPhone box separate from the black fanny bag is  
11:22AM 12 also indicative of a drug trafficker's desire or a drug  
11:22AM 13 dealer's desire to keep certain quantities separated from the  
11:22AM 14 stuff that they want to immediately walk around with, say, in  
11:22AM 15 a -- in a purse or a bag.

11:22AM 16 MS. PERLMUTTER: At this time, no further questions,  
11:22AM 17 Your Honor.

11:22AM 18 Thank you, Special Agent Faulkner.

11:22AM 19 THE COURT: Mr. Mottl?

11:22AM 20 MR. MOTTL: Thank you, Your Honor.

11:22AM 21 CROSS-EXAMINATION

11:22AM 22 BY MR. MOTTL:

11:22AM 23 Q Agent Faulkner, good morning. Let's see. You last  
11:22AM 24 testified concerning the placement of -- of the drugs in the  
11:23AM 25 car -- in the truck and your placement of that fact in the

11:23AM 1 context of what a trafficker may have done in a similar  
11:23AM 2 circumstances. For example, you -- you referred to the -- the  
11:23AM 3 black purse. And it looked like -- it may have been a waist  
11:23AM 4 pack and that how items were placed in there and how that is  
11:23AM 5 some -- a type of place where traffickers in your experience  
11:23AM 6 would use to place certain amounts of drugs. Were an  
11:23AM 7 individual who was a user of cocaine, probably an addict of  
11:23AM 8 some sort, where might they keep it as opposed to a drug  
11:24AM 9 dealer?

11:24AM 10 A An addict or a user depending on where they're going to  
11:24AM 11 use the drug could potentially keep it in a bag or a purse.

11:24AM 12 Q Like the one in -- in -- in Mr. Cummings' truck?

11:24AM 13 A Yes, sir. The -- at a -- yes, sir. So the location being  
11:24AM 14 much less important than the quantity is what -- yes.

11:24AM 15 Q And in terms of the -- the quantity, it is a case that --  
11:24AM 16 that cocaine being a chemical degrades in some ways; isn't that  
11:24AM 17 the case? In other words, over time it will lose its potency?

11:24AM 18 A I am aware that cocaine can lose its potency. I'm not  
11:24AM 19 sure the degrading is a result of time versus things that are  
11:25AM 20 added to the cocaine by a person to lose its potency.

11:25AM 21 Q It also is -- is all those, excuse me, also the case that  
11:25AM 22 exposure of cocaine to humidity or moisture, to heat that will  
11:25AM 23 affect the duration of the potency, correct?

11:25AM 24 A I'm not extremely familiar with the -- the type of affect  
11:25AM 25 that sunlight or moisture would have on the actual cocaine

11:25AM 1 itself. That's not something I'm very familiar with.

11:25AM 2 Q You mentioned sunlight and I omitted sunlight. So it's

11:25AM 3 not to your knowledge that sunlight will affect the potency of

11:25AM 4 cocaine over a period of time?

11:25AM 5 A Yes, sir. So my answer is I'm not sure what impact, if

11:25AM 6 any, sunlight or other environmental factors would have on the

11:25AM 7 potency of cocaine.

11:26AM 8 Q So there would be no reason to try and seal a -- an amount

11:26AM 9 of cocaine up from the -- essentially its environmental

11:26AM 10 atmosphere, sunlight, etcetera, in order to try to preserve its

11:26AM 11 utility for consumption? That's not the case?

11:26AM 12 A I'm sorry, sir, if you don't mind just repeating your

11:26AM 13 question so I can best answer it.

11:26AM 14 Q It's not to your knowledge based on your experience that

11:26AM 15 placement and/or keeping of cocaine essentially outside of a

11:26AM 16 container will not reduce the duration of its potency? Is

11:26AM 17 that -- I -- I just want to clarify. If that what your

11:26AM 18 response was.

11:26AM 19 MS. PERLMUTTER: Objection, asked and answered.

11:26AM 20 THE COURT: Overruled. You may answer, if you

11:27AM 21 understand the question.

11:27AM 22 THE WITNESS: If I understand your question, sir. The

11:27AM 23 environmental factors that you mentioned or the lack of sealing

11:27AM 24 the product, I don't specifically know the exact impact it

11:27AM 25 would have on the duration of the potency. I'm aware based on

11:27AM 1 talking to hundreds of people in varying roles in drug  
11:27AM 2 trafficking organizations that people do things in packaging  
11:27AM 3 and concealment because they feel certain things may or may not  
11:27AM 4 happen as a result. But that's just what they perceive and it  
11:27AM 5 may not be a scientific answer.

11:27AM 6 Q And those -- more specifically then you referred to things  
11:27AM 7 that individuals may think will happen. What are -- do you  
11:27AM 8 have any idea what those things are in your education or  
11:27AM 9 experience?

11:27AM 10 A People conceal cocaine in various ways if they're  
11:28AM 11 transporting it sometimes for the limited purpose of evading  
11:28AM 12 law enforcement detection or a narcotics detection dog. But in  
11:28AM 13 this particular case the way it was packaged is very consistent  
11:28AM 14 with it just being ready for immediate distribution.

11:28AM 15 Q In the clear plastic bags?

11:28AM 16 A Absolutely.

11:28AM 17 Q Now, the -- in terms of the sales price of cocaine, it's  
11:28AM 18 true like any other merchandise the -- the larger the amount  
11:28AM 19 often the cheaper the price. So if you're willing and you're  
11:28AM 20 able to buy a larger amount, it would cost you less than  
11:28AM 21 buying -- buying it in the smaller packets and -- isn't that  
11:28AM 22 the case?

11:28AM 23 A That is fair, yes.

11:28AM 24 Q So if an individual is a -- a relatively steady consumer  
11:28AM 25 of cocaine, and is -- cocaine is stimulant; is it not?



11:29AM 1 A Yes.

11:29AM 2 Q Supposedly they use it for some reason to -- many of them  
11:29AM 3 to function a certain way at work or in another context, they  
11:29AM 4 may want a larger amount in which case they would be wise in  
11:29AM 5 order to save money, funds, to buy a larger amount and to  
11:29AM 6 preserve it and use it over a longer period of time assuming  
11:29AM 7 they're able to afford it. Isn't that the case?

11:29AM 8 A One can speculate that someone would buy a larger amount  
11:29AM 9 for prolonged use or to share with others I guess would be a  
11:29AM 10 scenario. That -- that could be the case. In -- in this  
11:29AM 11 particular case though the way it was packaged to smaller  
11:30AM 12 quantities and then even smaller quantities and finally the  
11:30AM 13 smallest quantities is inconsistent with what you're  
11:30AM 14 describing.

11:30AM 15 Q Although in this case with your uncertainty about  
11:30AM 16 environmental factors and how it affects cocaine, you testified  
11:30AM 17 that you didn't have any knowledge of how it might affect it.  
11:30AM 18 If someone were concerned for whatever reason that a very  
11:30AM 19 relatively -- it's certainly not a cheap product, expensive  
11:30AM 20 product, cocaine, it's something that they would want to  
11:30AM 21 preserve as best as possible during the period of their use;  
11:30AM 22 isn't that correct? Assuming you said you didn't know one way  
11:30AM 23 or the other how sunlight, moisture, air, oxygen -- oxidation  
11:30AM 24 would affect it. If they wanted to preserve it, that would be  
11:30AM 25 the way to do it, correct, sealing it up?

11:31AM 1 A In many interviews I've conducted, I've -- it's never been  
11:31AM 2 brought to my attention that the person that was the  
11:31AM 3 interviewee or the person that was involved in the cocaine use  
11:31AM 4 and distribution had those particular concerns you're  
11:31AM 5 describing because they typically want to get it from their  
11:31AM 6 purchase to their body as quickly as possible so the prolonged  
11:31AM 7 preservation hasn't come up as an issue, sir.

11:31AM 8 Q Well, if someone were working or some were just rich, and  
11:31AM 9 no doubt there are people with money who engage in -- in drugs  
11:31AM 10 like that, illegal drugs. They would -- they would certainly  
11:31AM 11 take the larger amount that they purchased and I would imagine  
11:32AM 12 break it down into amounts that they could transport easily and  
11:32AM 13 take to places where they might consume it hence placing it in  
11:32AM 14 smaller packets to preserve the integrity of the -- the drug  
11:32AM 15 over a period of time and putting the larger amount, whatever  
11:32AM 16 they were able to afford, whether it's an ounce or two ounces  
11:32AM 17 or if someone was rich maybe buying a brick a thousand grams or  
11:32AM 18 something like that, place it some place where they could go to  
11:32AM 19 it and take as much as they need for purposes that they were  
11:32AM 20 using --

11:32AM 21 MS. PERLMUTTER: Objection, Your Honor, is there a  
11:32AM 22 question?

11:32AM 23 MR. MOTT: Yep. I'm sorry. What was the objection?

11:32AM 24 THE COURT: The -- the objection is you're speaking  
11:32AM 25 and not asking questions, Mr. Mottl, so if you do have a

11:32AM 1 question for this witness, please ask it.

11:32AM 2 BY MR. MOTTL:

11:32AM 3 Q So your response is that you see no reason why someone

11:33AM 4 would want to reduce a larger quantity whether it's a -- an

11:33AM 5 ounce to a gram-size packets for their own use and that

11:33AM 6 breaking it down like that is done solely for the purposes of

11:33AM 7 engaging in a transaction of selling or transferring. Is that

11:33AM 8 your position?

11:33AM 9 A My position is that the amounts in which it was broken

11:33AM 10 down demonstrates sale and not preservation for personal use

11:33AM 11 down the line. That's my -- that's my opinion, sir.

11:33AM 12 Q In -- in your experience as a -- in law enforcement, have

11:33AM 13 you ever encountered a relatively average person someone who's

11:33AM 14 not involved with a cartel or a -- a large organization in

11:34AM 15 possession of a -- a very large amount of -- of cocaine, a

11:34AM 16 brick say?

11:34AM 17 A If we're talking about a brick like a kilogram which is

11:34AM 18 what I refer to as a brick just so we're on the same page.

11:34AM 19 Q Yes.

11:34AM 20 A I have encountered on rare occasions someone who's not

11:34AM 21 directly affiliated with the cartel in possession of a kilogram

11:34AM 22 or a brick of cocaine. It's -- it's -- it's rather uncommon.

11:34AM 23 Q It's rare.

11:34AM 24 A It's uncommon.

11:34AM 25 Q Now, how -- if someone were going to the beach and they're

11:34AM 1 addicted, wanted to enjoy their -- their illegal substance and  
11:34AM 2 not to mention their detrimental substance at the beach, taking  
11:34AM 3 it in a smaller packet would be the way to do it. You would  
11:35AM 4 you agree, correct?

11:35AM 5 A I would agree that if a user was going to in your example  
11:35AM 6 go to the beach to consume a small amount of cocaine, they  
11:35AM 7 would bring a small packet that they would set aside for their  
11:35AM 8 personal use, like one small packet or maybe two at the most.  
11:35AM 9 If they were going to have a -- a session perhaps I don't know  
11:35AM 10 that the beach is -- is a normal example but that would be an  
11:35AM 11 amount.

11:35AM 12 Q So they would take it in a smaller amount and there would  
11:35AM 13 be a reason to put it in a packet and to transport it that way  
11:35AM 14 for their own questionable enjoyment. I mean, this is -- they  
11:35AM 15 would -- do you agree that they would take it -- likely take it  
11:35AM 16 in a very small package?

11:35AM 17 A My experience is that the end user would purchase it  
11:35AM 18 already in that packaging so that they would then just dump it  
11:35AM 19 onto a -- a smooth surface to then use it whenever they saw  
11:36AM 20 fit, but it would already be purchased in that small packaging.

11:36AM 21 Q And that most likely would be someone who is relative --  
11:36AM 22 not financially well off and maybe sort of hand to mouth. In  
11:36AM 23 other words, they buy it in a packet which is you stated is the  
11:36AM 24 more expensive way to purchase it packet to packet, day-to-day.  
11:36AM 25 That's what you're referring to, correct, that it's that level



11:36AM 1 of consumption, that is buying it on a short-term basis to  
11:36AM 2 consume it. And then when they desire it again whether it's  
11:36AM 3 the next day or the next hour, to go out and get from their  
11:36AM 4 pusher or is a supplier another small packet. And that's --  
11:37AM 5 that -- that is what's your saying?

11:37AM 6 A If I understand your question, I am saying that a consumer  
11:37AM 7 or and end user would potentially purchase an amount that they  
11:37AM 8 feel like they would use in a session or two. And when they're  
11:37AM 9 ready or when they have the means to what we call re-up or  
11:37AM 10 purchase another similar amount that they would then seek out  
11:37AM 11 their supplier and do it again in the same fashion that they  
11:37AM 12 did at the last time.

11:37AM 13 Q So they had -- they had a -- a daily or a once every  
11:37AM 14 two-day habit, they would be making three, four trips to  
11:37AM 15 their -- their pusher a week and that would go along as long as  
11:37AM 16 they could sustain it or as long as they desired to -- to  
11:37AM 17 maintain it without help. Is that -- that's -- is that the  
11:38AM 18 only way you can -- you in your experience of can see of how  
11:38AM 19 it's kept and consumed by addicts?

11:38AM 20 A In my experience, I've seen cocaine kept and consumed a  
11:38AM 21 few different ways by addicts. But a way or a common way if  
11:38AM 22 they know that they're predisposed to use cocaine several times  
11:38AM 23 a week, they may purchase a teen, which is a 16th of an ounce,  
11:38AM 24 and then pour portions onto the surface or a line to consume  
11:38AM 25 when they felt like it was their time to consume. And then

11:38AM 1 purchase -- or -- or then pour out more and more from that one  
11:38AM 2 bag, if they needed to do it, on a more regular basis until  
11:38AM 3 they're out and decide that it's time for them to purchase  
11:38AM 4 more.

11:38AM 5 Q You're referring to the one bag. You indicated that the  
11:39AM 6 small one-gram bag was basically a single for consumption. One  
11:39AM 7 person would set it out in a line --

11:39AM 8 THE COURT REPORTER: I'm sorry. Could you say it  
11:39AM 9 again.

11:39AM 10 BY MR. MOTTL:

11:39AM 11 Q A single individual would set it out in a line and snort  
11:39AM 12 it up or ingest it in some other way. So a packet would be  
11:39AM 13 just a one-time shot and then they would want more assuming  
11:39AM 14 they -- they were so incline or needed it.

11:39AM 15 Now, I mentioned basically a street dealing and  
11:39AM 16 individuals who are basically probably part-time offenders  
11:39AM 17 themselves stealing and -- and doing other items or selling  
11:40AM 18 themselves in order to support their habit, but there are  
11:40AM 19 people with money who are employed. It would make sense, would  
11:40AM 20 it not, for them to buy larger quantities in order to extend  
11:40AM 21 their dollar in -- in essentially wasting it on this drug, but  
11:40AM 22 they need it. They're addicted. It would make sense for them,  
11:40AM 23 assuming they could afford it, to buy a larger amount and to  
11:40AM 24 use it over a period of time rather than you suggested one --

11:40AM 25 MS. PERLMUTTER: Objection, Your Honor, is there a

11:40AM 1 question?

11:40AM 2 MR. MOTTL: -- one packet at a time.

11:40AM 3 THE COURT: Mr. Mottl, I tried to give you a lot of  
11:40AM 4 leeway.

11:40AM 5 MR. MOTTL: Thank you, Your Honor. I'll -- I'll --  
11:40AM 6 I'll make it shorter.

11:40AM 7 THE COURT: Please ask it.

11:40AM 8 MR. MOTTL: I appreciate it.

11:40AM 9 BY MR. MOTTL:

11:40AM 10 Q So you do not -- you can't conceive of that being the  
11:41AM 11 case, individuals wanting to buy a larger amount and sustaining  
11:41AM 12 their use over a period of time assuming they could afford it,  
11:41AM 13 that is nothing that you are familiar with in -- in -- in your  
11:41AM 14 career as a law enforcement officer specializing in -- in  
11:41AM 15 narcotics?

11:41AM 16 A There's a wide variety in which people make their  
11:41AM 17 individual decisions on what amounts to purchase at what time.  
11:41AM 18 And those could have many different outside factors which weigh  
11:41AM 19 into the large variety in which they decide they're going to  
11:41AM 20 purchase a gram or a couple of grams or three grams. It  
11:41AM 21 depends on so many different factors.

11:41AM 22 Q It does. I agree.

11:41AM 23 In fact, I believe is not likely that you might have  
11:41AM 24 friends or acquaintances that might pool their money and get a  
11:42AM 25 larger quantity and just split it up because that's the cheap

11:42AM 1 way to go in supporting their -- their habit?

11:42AM 2 A That has happened, yes.

11:42AM 3 Q So when an individual like Mr. Cummings has amounts as was

11:42AM 4 described by previous witnesses, you indicated you observed in

11:42AM 5 the discovery where there is a large amount in the small

11:42AM 6 packets. The immediate and logical conclusion isn't

11:42AM 7 necessarily that they're a dealer, is it?

11:42AM 8 A My conclusion, sir, was based on the different tiers of

11:42AM 9 varying quantities. There were the gram quantities, the teen

11:42AM 10 to eight ball quantities, and the half ounce to ounce

11:42AM 11 quantities. In its totally all roads lead to the fact that

11:42AM 12 those are quantities packaged for distribution.

11:43AM 13 Q Okay. Now, regarding what you just said and -- and you

11:43AM 14 indicated as much earlier on in your direct testimony, the --

11:43AM 15 the amounts weighed out. The net amounts varied considerably,

11:43AM 16 true? The ones in the smaller packets were a gram plus or

11:43AM 17 minus, 20 percent of a gram, whatever that is. So it varied

11:43AM 18 but they were all in smaller packets presumably to be used at

11:43AM 19 times when that's what was desired. The larger ones, larger

11:43AM 20 packets, again, no consistent -- there were no real consistent

11:43AM 21 measures of weight, but in your -- in -- from your perspective

11:44AM 22 understandably as a experienced officer, you estimated, well,

11:44AM 23 this is about an eight ball, yet there's no indication in terms

11:44AM 24 of the actual weight that it was an eight ball or, you know,

11:44AM 25 even relatively close to an eight ball or a teen. So these



11:44AM 1 were varying quantities and you assessed that they were  
11:44AM 2 probably intended to be those amounts because those amounts are  
11:44AM 3 transacted by dealers, correct?

11:44AM 4 A In terms of the amounts you just discussed, although they  
11:44AM 5 are not exactly to the hundredth of a gram, they are spot on  
11:44AM 6 within the range of what would be an eight ball or a teen and  
11:44AM 7 these are very normal amounts that consumers would purchase  
11:44AM 8 from a distributor.

11:44AM 9 Q You mentioned -- used the word spot on. They were -- are  
11:45AM 10 you referring to a -- a ballpark interval where you could say,  
11:45AM 11 yes, this is a teenth (verbatim) or an eight ball or an ounce?

11:45AM 12 A Yes, sir. That would have been based on my experience,  
11:45AM 13 this would -- it's well within the range. When I say "spot  
11:45AM 14 on," I mean very within the range of what a consumer would look  
11:45AM 15 at and say this is what I'm expecting. This is what I'm  
11:45AM 16 purchasing. I'm not going to complain to my dealer that they  
11:45AM 17 shorted me.

11:45AM 18 Q It might be a -- a use and a half. That is a -- well, you  
11:45AM 19 have a half ounce, an ounce. You have a teen and then you have  
11:46AM 20 an eight ball. These are larger quantities that would serve an  
11:46AM 21 individual who wanted that amount for a certain purpose or for  
11:46AM 22 certain period of time, correct? And so they purchase it and  
11:46AM 23 so the dealers may prepare it --

11:46AM 24 MS. PERLMUTTER: Objection, Your Honor --

11:46AM 25 MR. MOTTL: -- isn't that correct?

11:46AM 1 THE COURT: Sustained.

11:46AM 2 BY MR. MOTTL:

11:46AM 3 Q The amounts that you talked to are in a way they're  
11:46AM 4 servings of the drug how much an individual wants to buy an  
11:46AM 5 eight ball or a teen. That's a serving and a half, two  
11:46AM 6 servings, correct? So they buy what they're interested or  
11:46AM 7 maybe what they could afford to buy, correct?

11:46AM 8 A Not necessarily, sir. In the drug consumption business,  
11:46AM 9 there's no half servings so someone's either going use a  
11:46AM 10 serving or a session or the -- it's just going to be divided up  
11:46AM 11 and that's based on whoever is using it, what they want to  
11:46AM 12 consume at that given time or if they want to stretch it out  
11:46AM 13 for a prolonged period of time.

11:46AM 14 Q Yeah, I'm sorry. That's -- that's what I meant by a  
11:47AM 15 serving. In other words, an individual may buy as much as  
11:47AM 16 they -- maybe they -- as much as they can afford at the time or  
11:47AM 17 as much as they want to consume over a period of time that they  
11:47AM 18 anticipate wanting the drug. And so they ask for a certain  
11:47AM 19 amount eight ball, a teen or, etcetera, or the other quantities  
11:47AM 20 that you mentioned. But so too an individual who would  
11:47AM 21 purchase for them self and is breaking down a larger amount  
11:47AM 22 might quite logically break it down into those amounts too  
11:47AM 23 which are -- when I meant a serving, basically what they would  
11:47AM 24 want just sit down and in one line. When you said that was a  
11:47AM 25 gram or maybe a gram plus an additional amount and that may be

11:47AM 1 a teen, or maybe they wanted for a little longer. So that  
11:47AM 2 would be a reason why an individual, would it not, who had  
11:47AM 3 bought a larger amount maybe not a huge amount but a larger  
11:47AM 4 amount because their budget allowed them to or because it was,  
11:48AM 5 you know, budget-wise to --

11:48AM 6 MS. PERLMUTTER: Objection, question, Your Honor.

11:48AM 7 THE COURT: Mr. Mottl, you have to ask a question.  
11:48AM 8 Ask a question not give speeches.

11:48AM 9 BY MR. MOTTL:

11:48AM 10 Q Okay. It would not be unusual to find a person who  
11:48AM 11 possesses a small amount greater than a gram perhaps a teen or  
11:48AM 12 a ball for their own consumption, correct?

11:48AM 13 A Once a consumer or a person for that matter has amounts  
11:48AM 14 that are above an eight ball and we're talking about getting  
11:48AM 15 into the realms of quarter, half-ounce quantities, it then  
11:48AM 16 becomes more and more inconsistent with personal use and it  
11:48AM 17 crosses over into that line of distribution and then one would  
11:48AM 18 look at the -- the packaging from an overall perspective to  
11:49AM 19 confirm that theory.

11:49AM 20 Q I can see that. More and more so someone's got a brick  
11:49AM 21 most likely they are an unusual person who likes to drop big  
11:49AM 22 money on things like that and keep to themselves. But a  
11:49AM 23 greater the likelihood that they are engaging in some sort of  
11:49AM 24 trafficking, I would agree.

11:49AM 25 But the amounts three -- three ounces of regular coke

11:49AM 1 and a smaller amount of -- of the crack is not a huge amount,  
11:49AM 2 is it not? It's not a huge amount, is it, compared to what  
11:49AM 3 dealers deal with?

11:49AM 4 A That is a relatively consistent amount with what dealers  
11:49AM 5 deal with. In the grand scheme of things, there are larger  
11:50AM 6 higher-level distributors that deal in larger wholesale  
11:50AM 7 quantities, but those amounts are very consistent with a retail  
11:50AM 8 distributor that has a customer base at a more retail level --  
11:50AM 9 local level.

11:50AM 10 Q And that amount is three ounces?

11:50AM 11 A Or even less, yes.

11:50AM 12 Q Now, the individual you say who deal along those lines  
11:50AM 13 which you -- you just described, are they full-time dealers?

11:50AM 14 They're -- they are dealer dealers. They're not just sharing  
11:50AM 15 with friends or anything like that. That's your experience?

11:50AM 16 A There is no one size fits all for whether or not someone  
11:50AM 17 deals full time or part-time based at the ounce level.  
11:50AM 18 Typically, at a much larger level like at the kilogram level,  
11:50AM 19 they're more likely to be full-time dealers and that's all that  
11:51AM 20 they do. At the ounce level, they could be doing it to either  
11:51AM 21 support a habit, to make extra money. They could support a  
11:51AM 22 drug or gambling habit or just want to live in a different --  
11:51AM 23 better financial means than they -- than they currently have.  
11:51AM 24 There's -- there's -- I'd be speculating if I -- if I gave you  
11:51AM 25 more examples.



11:51AM 1 Q So essentially they are living -- they're using drugs and  
11:51AM 2 living an illegal life style supporting their -- basically  
11:51AM 3 supporting their livelihood. That's a livelihood. It's  
11:51AM 4 basically drugs. Now, there are people that work. Some people  
11:51AM 5 work two jobs or three jobs and sustain themselves in those  
11:51AM 6 jobs because they're relying on maybe not cocaine which is sort  
11:51AM 7 of an expensive way --

11:51AM 8 MS. PERLMUTTER: Objection, Your Honor.

11:51AM 9 THE COURT: Mr. Mottl --

11:52AM 10 MR. MOTTL: There are -- yes, Your Honor.

11:52AM 11 BY MR. MOTTL:

11:52AM 12 Q Is there anything beyond the three ounces roughly three  
11:52AM 13 ounces in various states of containment that were in  
11:52AM 14 Mr. Cummings' car that -- is there anything other than that  
11:52AM 15 that leads you to believe that he, in fact, was a dealer as  
11:52AM 16 opposed to a consumer?

11:52AM 17 A Yes, sir. The cash that was recovered in the  
11:52AM 18 denominations in which they were recovered does also suggest  
11:52AM 19 that the person that had the drugs is also distributing the  
11:53AM 20 drugs.

11:53AM 21 Q Okay. And, you know, fifties and hundreds, do you know  
11:53AM 22 anybody that takes money out of the bank in hundreds or is it  
11:53AM 23 only drug dealers or people that you would suspect as being  
11:53AM 24 drug dealers?

11:53AM 25 A I know people that take money out of the bank in hundreds

11:53AM 1 if -- if you're talking about at a counter or an ATM,  
11:53AM 2 there's obviously two different -- we just answered that  
11:53AM 3 question but in general, yes, I do.

11:53AM 4 Q There are strange people -- and in my opinion strange  
11:53AM 5 people who would like to carry bills like that and they're not  
11:53AM 6 criminals necessarily. I mean, some are. Some aren't. You  
11:53AM 7 would agree that your experience which is extensive shapes your  
11:53AM 8 assessment of any particular situation along the lines of your  
11:53AM 9 training and your education?

11:54AM 10 A Yes. Those -- those factors do shape my opinions here  
11:54AM 11 today.

11:54AM 12 MR. MOTT: All right. No other questions, Your  
11:54AM 13 Honor. Thank you.

11:54AM 14 THE COURT: Ms. Perlmutter, any redirect?

11:54AM 15 MS. PERLMUTTER: Very short, Your Honor.

11:54AM 16 REDIRECT EXAMINATION

11:54AM 17 BY MS. PERLMUTTER:

11:54AM 18 Q Mr. Mottl I believe asked you a series of questions about  
11:54AM 19 potential personal use. Do you recall that?

11:54AM 20 A I do.

11:54AM 21 Q Okay. In your experience and training, can a person who  
11:54AM 22 engages in drug distribution also personally use drugs?

11:54AM 23 A Yes, that's quite common.

11:54AM 24 Q And are those two concepts mutually exclusive?

11:54AM 25 A No.

11:54AM 1 Q And your conclusion here that the items found were  
11:55AM 2 consistent with distribution, is that under the totality of the  
11:55AM 3 circumstances?  
11:55AM 4 A Yes, it is.  
11:55AM 5 Q That includes the various quantities of amounts that you  
11:55AM 6 found?  
11:55AM 7 A Yes.  
11:55AM 8 Q And did you describe those as dealer-type amounts?  
11:55AM 9 A Yes.  
11:55AM 10 Q And that included baggies in gram amounts?  
11:55AM 11 A Yes, it did.  
11:55AM 12 Q It include baggies in teen amounts?  
11:55AM 13 A Yes.  
11:55AM 14 Q Included a baggy in an eight ball amount?  
11:55AM 15 A Correct.  
11:55AM 16 Q And did that include a baggy in a half-ounce amount?  
11:55AM 17 A Yes. I believe there were three.  
11:55AM 18 Q And did that include another baggy in an ounce amount?  
11:55AM 19 A Yes, ma'am.  
11:55AM 20 Q And what's significance to you about the larger amounts  
11:55AM 21 versus the smaller gram amounts?  
11:55AM 22 A As I stated, those larger amounts are consistent with  
11:55AM 23 having a customer that wanted to purchase something in a  
11:56AM 24 half-ounce quantity perhaps to then break it down into smaller  
11:56AM 25 quantities for further distribution or sale. It doesn't

11:56AM 1 necessarily have to be a sale for profit. It could be a number  
11:56AM 2 of different things that could be -- the -- the genesis of the  
11:56AM 3 distribution itself.

11:56AM 4 Q Is your conclusion also based on the way that the cocaine  
11:56AM 5 and cocaine base were found in their packaging?

11:56AM 6 A Yes.

11:56AM 7 Q That also the number of baggies?

11:56AM 8 A Yes, ma'am.

11:56AM 9 Q That includes the type of baggies that were used?

11:56AM 10 A Yes.

11:56AM 11 Q And is your conclusion based on the total amount, the  
11:56AM 12 three ounces of cocaine that were found?

11:56AM 13 A Yes, it is.

11:56AM 14 Q And is that also based on the fact that it was found in a  
11:56AM 15 car?

11:56AM 16 A Yes. That was part the of the analysis.

11:56AM 17 Q And what about the fact of how the cocaine and the cocaine  
11:56AM 18 base were organized in the car, does that -- did that influence  
11:56AM 19 your opinion?

11:56AM 20 A Yes. That was significant.

11:57AM 21 Q And is -- and why is that?

11:57AM 22 A Just for ease of access. If someone has a customer that  
11:57AM 23 they're rolling up to conduct a short transaction with and  
11:57AM 24 the -- the customer wants a certain amount, they know which  
11:57AM 25 area to go to within a multi-compartmented bag or within



11:57AM 1 several closed containers to get that amount that the customer

11:57AM 2 is asking for.

11:57AM 3 Q And the iPhone box wasn't included in the black bag,

11:57AM 4 right, they were separate?

11:57AM 5 A Yes.

11:57AM 6 Q Why would a drug distributor want to separate the larger

11:57AM 7 amounts of cocaine from the smaller amounts?

11:57AM 8 A One common reason would be that if the distributor was

11:57AM 9 going to a -- a place to meet with someone, took the fanny bag

11:57AM 10 or purse or smaller bag out of the car to do their transaction,

11:57AM 11 and was either encountered and arrested by law enforcement or

11:57AM 12 robbed by their customer and all of their supply was taken,

11:58AM 13 they would still have an additional large supply to fall back

11:58AM 14 on to get back on their feet. That would be one reason.

11:58AM 15 MS. PERLMUTTER: No further questions, Your Honor.

11:58AM 16 THE COURT: Special Agent Faulkner --

11:58AM 17 MR. MOTTL: May I have a brief recross?

11:58AM 18 THE COURT: No.

11:58AM 19 Special Agent Faulkner, you may step down.

11:58AM 20 THE WITNESS: Thank you, Your Honor.

11:58AM 21 THE COURT: All right. Does the government have any

11:58AM 22 other witnesses it wishes to call in its case in chief?

11:58AM 23 MS. OLSON: The government rests, Your Honor.

11:58AM 24 THE COURT: All right. Ladies and gentlemen, the

11:58AM 25 government's case in chief has been concluded meaning the

11:58AM 1 government does not intend to call any further witnesses or  
11:58AM 2 present any other evidence.

11:58AM 3 Does the defense have a motion that it wishes to make?

11:58AM 4 MR. MOTTTL: Yes, Your Honor.

11:58AM 5 THE COURT: Please approach.

11:58AM 6 MR. MOTTTL: Yes.

11:58AM 7 (Sidebar on the record:)

11:58AM 8 THE COURT: Go ahead, Mr. Motttl.

11:58AM 9 MR. MOTTTL: Defense moves for a motion for judgment of  
11:58AM 10 acquittal where either those dates, recollection of the facts,  
11:59AM 11 as well as the applicable law. Nothing further.

11:59AM 12 THE COURT: You don't wish to argue further?

11:59AM 13 MR. MOTTTL: No.

11:59AM 14 THE COURT: All right. That motion is denied. There  
11:59AM 15 is more than sufficient evidence particularly when viewed in  
11:59AM 16 the light most favorable to the prosecution to establish all of  
11:59AM 17 the elements of Counts 1 and 2 beyond a reasonable doubt  
11:59AM 18 together with the fact that -- together with the absence of any  
11:59AM 19 entrapment issue. I believe there's also evidence in the  
11:59AM 20 record beyond a reasonable doubt that would lead the jury to  
11:59AM 21 conclude that the defendant in this case was not entrapped in  
11:59AM 22 the manner as suggested by the defense in pretrial submissions  
11:59AM 23 as well as in argument during the course of trial.

11:59AM 24 Mr. Motttl, do you intend to offer evidence now?

11:59AM 25 MR. MOTTTL: Yes.

11:59AM 1 THE COURT: Okay. Then let's call the first witness.

12:00PM 2 (End of side bar.)

12:00PM 3 THE COURT: So ladies and gentlemen, with the close of  
12:00PM 4 the prosecution's case in chief, I instructed you earlier that  
12:00PM 5 you should keep an open mind until the close of all of the  
12:00PM 6 evidence. The defendant himself also has an opportunity to  
12:00PM 7 present evidence of his own in his case in chief. Mr. Mottl  
12:00PM 8 has indicated that the defense wishes to do so by calling  
12:00PM 9 several witnesses so we are going to start with that process  
12:00PM 10 now.

12:00PM 11 Mr. Mottl, go ahead and call your first witness  
12:00PM 12 please.

12:00PM 13 MR. MOTTL: Yes. We call to the stand Lyle Cummings,  
12:00PM 14 the defendant.

12:00PM 15 MS. PERLMUTTER: Your Honor, can we have a brief side  
12:00PM 16 bar?

12:00PM 17 THE COURT: Yes.

12:00PM 18 MS. PERLMUTTER: Thank you.

12:00PM 19 THE COURT: Mr. Cummings, could you please join us at  
12:00PM 20 sidebar, please?

12:01PM 21 (Sidebar on the record:)

12:01PM 22 THE COURT: I apologize. I didn't realize that  
12:01PM 23 Mr. Cummings was going to be one of the witnesses you called.

12:01PM 24 MS. PERLMUTTER: I did not either.

12:01PM 25 THE COURT: Mainly because he is not on your witness

12:01PM 1 list. You understand that, right?

12:01PM 2 MR. MOTTL: Yes.

12:01PM 3 THE COURT: And you nonetheless are going to call him?

12:01PM 4 MR. MOTTL: Yes, I -- well, in state court that's the

12:01PM 5 practice, my apologies, yes.

12:01PM 6 THE COURT: The practice, is what, to not include

12:01PM 7 witnesses that you intend to call on your witness list? That's

12:01PM 8 your practice in state court?

12:01PM 9 MR. MOTTL: To -- to disclose whether if, in fact, at

12:01PM 10 that time -- the time of preparation of the witness list,

12:01PM 11 it's intent -- there is an intent to call a defendant as

12:01PM 12 opposed to waiting until after the presentation of the state's

12:01PM 13 case.

12:01PM 14 THE COURT: It's incumbent on you to include all those

12:01PM 15 who may testify at trial. The -- the defendant, Mr. Cummings,

12:01PM 16 is not on your list.

12:01PM 17 MR. MOTTL: I'm sorry. Yeah, that's --

12:01PM 18 THE COURT: That's not the practice in this court nor

12:02PM 19 is it the practice of any court with which I'm familiar. It

12:02PM 20 falls into the category of sand bagging, don't you think? Is

12:02PM 21 the government prepared to cross?

12:02PM 22 MS. OLSON: Your Honor, may I just add Mr. Mottl did

12:02PM 23 inform me repeatedly over a period of time that he was most

12:02PM 24 likely going to call the defendant, and we were aware and we

12:02PM 25 are prepared to cross and we don't object.



12:02PM 1 THE COURT: All right. I still -- this is not only  
12:02PM 2 notice to the prosecution, it's notice to the Court. And while  
12:02PM 3 you guys may have had discussions with Mr. Mottl, I had not.  
12:02PM 4 So the notice to me indicated that persons other than the  
12:02PM 5 defendant were going to be called or may -- may be called.  
12:02PM 6 Okay.

12:02PM 7 So next time you are to list on your trial witness  
12:02PM 8 list all those who you may call at trial. If you don't do  
12:02PM 9 that, you risk exclusion of that witness when you do call them  
12:02PM 10 at trial. And I'm sure that's not a risk that you wish to  
12:02PM 11 bear. I'm going to allow the defendant to testify --

12:02PM 12 MR. MOTTL: All right. Sorry.

12:03PM 13 THE COURT: But that shouldn't happen again.

12:03PM 14 So, Mr. Cummings, do you understand, sir, that you  
12:03PM 15 have constitutional right to testify in your own defense, if  
12:03PM 16 you wish to do that?

12:03PM 17 THE DEFENDANT: Yes. Yes.

12:03PM 18 THE COURT: Do you further understand that if you  
12:03PM 19 choose not to testify no inference or suggestion of your guilt  
12:03PM 20 could be drawn by the jury by you -- by the fact that you  
12:03PM 21 elected not to testify?

12:03PM 22 THE DEFENDANT: Yes.

12:03PM 23 THE COURT: Do you understand that if you take the  
12:03PM 24 stand it is subject to cross-examination by the United States  
12:03PM 25 attorney's office?

12:03PM 1 THE DEFENDANT: Yes.

12:03PM 2 THE COURT: And have you discussed whether or not it's  
12:03PM 3 advisable to testify with Counsel?

12:03PM 4 THE DEFENDANT: I don't understand the question.

12:03PM 5 THE COURT: Have you discussed with your attorney  
12:03PM 6 whether or not it's a good idea for you to take the stand?

12:03PM 7 THE DEFENDANT: Oh, yes.

12:03PM 8 THE COURT: And do you have any questions regarding  
12:03PM 9 your rights to testify?

12:03PM 10 THE DEFENDANT: No.

12:03PM 11 THE COURT: Do you have -- do you have a need for  
12:03PM 12 additional time to make your decision regarding whether to  
12:03PM 13 testify or not?

12:03PM 14 THE DEFENDANT: No.

12:03PM 15 THE COURT: What have you decided to do, sir, testify  
12:03PM 16 or not?

12:03PM 17 THE DEFENDANT: Testify.

12:03PM 18 THE COURT: All right. Let's go.

12:03PM 19 THE DEFENDANT: Thank you.

12:04PM 20 (End of side bar.)

12:04PM 21 THE CLERK: Please raise your right hand.

12:04PM 22 LYLE CUMMINGS,

12:04PM 23 called as a witness, having been first duly sworn, was examined  
12:04PM 24 and testified as follows:

12:04PM 25 THE CLERK: Please state your full name and spell your

12:04PM 1 last name for the record.

12:04PM 2 THE WITNESS: Lyle Rikio Cummings, C-U-M-M-I-N-G-S.

12:04PM 3 DIRECT EXAMINATION

12:04PM 4 BY MR. MOTTL:

12:04PM 5 Q Mr. Cummings, where were you born?

12:05PM 6 A What was that?

12:05PM 7 Q Where were you born?

12:05PM 8 A I was born on Maui.

12:05PM 9 Q And where do you live now?

12:05PM 10 A Hali'imaile.

12:05PM 11 Q And that's on the island of Maui?

12:05PM 12 A Yes, that is.

12:05PM 13 Q All right. Who do you live with?

12:05PM 14 A I live with my mom and now my wife.

12:05PM 15 Q And your father, did he also live there?

12:05PM 16 A At the time of this incident, yes.

12:05PM 17 Q And where is he now?

12:05PM 18 A He passed away.

12:05PM 19 Q Now, have you been employed or were you employed at the  
12:05PM 20 time of this incident?

12:05PM 21 A Yes. I was employed by the County of Maui.

12:05PM 22 Q County of Maui, and how long had you been -- been employed  
12:05PM 23 there?

12:05PM 24 A 26 years.

12:05PM 25 Q And did you work throughout that time in a single

12:05PM 1 department?

12:05PM 2 A No. My first five years was in recreation part-time. And

12:06PM 3 then I did about eight years as a park caretaker and then the

12:06PM 4 final ten years I was a tractor mower operator.

12:06PM 5 Q And what did you do in the mower?

12:06PM 6 A I mowed various field parks, county parks around Kihei

12:06PM 7 area.

12:06PM 8 Q Now, did you -- were you alone in work doing that or did

12:06PM 9 you have working partners or companions?

12:06PM 10 A I worked solo on my own mower, but there was another mower

12:06PM 11 operator doing the same operation in other parks too.

12:06PM 12 Q All right. Are you no longer employed by the County of

12:06PM 13 Maui?

12:06PM 14 A No. I was forced to resign with no reason. They gave --

12:06PM 15 I asked them for a reason why I had to resign and they said

12:06PM 16 either I quit, I get fired or I resign on good terms.

12:07PM 17 Q And that was as a result of this incident?

12:07PM 18 A It was a result when I got picked up by the federal.

12:07PM 19 Q I see. And are you employed now? You're not

12:07PM 20 incarcerated, you are on release, correct?

12:07PM 21 A Yes, pretrial release.

12:07PM 22 Q I beg your pardon?

12:07PM 23 A Pretrial release.

12:07PM 24 Q Release, correct.

12:07PM 25 Have you obtained new employment?



12:07PM 1 A Yes, I have.

12:07PM 2 Q And where is that with?

12:07PM 3 MS. OLSON: Objection, relevance.

12:07PM 4 THE COURT: I'll allow a little bit more background.

12:07PM 5 Go ahead.

12:07PM 6 THE WITNESS: It's MP Management, better known as Mahi

12:07PM 7 Pono.

12:07PM 8 Q And what do you do there?

12:07PM 9 A I'm also a tractor mower operator.

12:07PM 10 Q So you -- you do the same tasks as you did with the

12:07PM 11 county? Thank you.

12:07PM 12 A Yeah, a lot larger mower.

13 Q Thank you.

14 THE COURT REPORTER: Okay. You guys are talking over

15 each other.

16 THE WITNESS: A lot larger tractor mower.

17 BY MR. MOTTL:

12:08PM 18 Q Now, are -- are you married?

12:08PM 19 A At the time now, yes, I am.

12:08PM 20 Q Okay. And at the time of this incident, were you married?

12:08PM 21 A No. I was with -- I was -- she was my girlfriend at that

12:08PM 22 time.

12:08PM 23 Q Okay. And had you ever been married?

12:08PM 24 A No.

12:08PM 25 Q Do you have children?

12:08PM 1 A No.

12:08PM 2 Q So you -- what is the name of your wife?

12:08PM 3 A Vianna Kahanu, now she resides under Cummings.

12:08PM 4 Q Cummings.

12:08PM 5 And she lives with you and your mother in Hali'imaile?

12:08PM 6 A Yes.

12:08PM 7 Q All right. Where did you attend school?

12:08PM 8 A I went to Makawao Elementary, then I went to Kalama

12:08PM 9 Intermediate, and I graduated from Maui High School.

12:08PM 10 Q And after that did you continue with school at all?

12:08PM 11 A I had one year at MCC.

12:09PM 12 Q And did you begin work; is that correct?

12:09PM 13 A I was -- I worked part-time at Ron's Auto Parts and then

12:09PM 14 Woolworth's and then I was employed -- unemployed collecting

12:09PM 15 unemployment.

12:09PM 16 Q And how -- how long after you finished your year at Maui

12:09PM 17 Community College did you begin work with the county?

12:09PM 18 A About four -- four years, five years.

12:09PM 19 Q Okay. You -- you had a cellphone which you had for quite

12:09PM 20 long time, correct?

12:09PM 21 A Yes.

12:09PM 22 Q How long did that have that phone?

12:09PM 23 A Oh, about 20 years.

12:09PM 24 Q Now, you used that phone -- began using that phone at some

12:09PM 25 point by utilizing the internet. So you began to use it for

12:10PM 1 communication, you used it to engage in activities that are

12:10PM 2 available on the internet; isn't that correct?

12:10PM 3 A Yes.

12:10PM 4 Q All right. About what time -- what -- how many years ago

12:10PM 5 was it that you started using the phone for internet purposes,

12:10PM 6 approximate?

12:10PM 7 A Maybe 15 years.

12:10PM 8 Q Now, what -- what at that time did you begin using it for?

12:10PM 9 What did you --

12:10PM 10 A Facebook, Instagram.

12:10PM 11 Q So social websites. All right.

12:10PM 12 Now, at some point in time you began using it with --

12:10PM 13 with a program called Skout; isn't that correct?

12:10PM 14 A Yes.

12:10PM 15 Q At the time were there others that you also utilized or

12:11PM 16 explored using in addition to Skout and the two you mentioned

12:11PM 17 previously?

12:11PM 18 A Yes.

12:11PM 19 Q Approximately how many others?

12:11PM 20 A Like two others.

12:11PM 21 Q All right. Now, when did you begin using Skout?

12:11PM 22 A Maybe like five years ago.

12:11PM 23 Q And what -- Skout is -- could you describe Skout? That is

12:11PM 24 what one does with Skout?

12:11PM 25 A Skout is an adult chat site that you can go on and engage

12:11PM 1 in chatting and meeting people.

12:11PM 2 Q Did you meet over the five years that you engaged with

12:11PM 3 Skout -- strike that.

12:11PM 4 You said you began five years ago using Skout. Did

12:12PM 5 you continue using Skout after this incident?

12:12PM 6 A No.

12:12PM 7 Q So going back, you were using Skout at the time of this

12:12PM 8 incident for how many years?

12:12PM 9 A Maybe like two years, it's kind of newer.

12:12PM 10 Q Okay, just approximate. Now, how many -- did you -- did

12:12PM 11 you establish any lasting relationships communicating with

12:12PM 12 people on Skout?

12:12PM 13 A Yeah, I had a few friends on there that I would interact

12:12PM 14 when I -- we saw each other on. And then I came friends with

12:12PM 15 one that and we all would hang out like. We hanging out.

12:12PM 16 Q All right. Now, in March of -- of 2020, the year 2020,

12:12PM 17 you responded or at least engaged a person on Skout named

12:13PM 18 Kiana; isn't that correct?

12:13PM 19 A Yes.

12:13PM 20 Q All right. Now, it was you that saw this -- this page

12:13PM 21 where this persona Kiana was -- had basically presented herself

12:13PM 22 on Skout?

12:13PM 23 A Yes.

12:13PM 24 Q You contacted her on Skout and began communicating with

12:13PM 25 her?



12:13PM 1 A Yes.

12:13PM 2 Q Now, was there some point in time where you began

12:13PM 3 communicating by texting?

12:13PM 4 A Yes. She gave me her number and suggested we start

12:13PM 5 texting.

12:13PM 6 Q Okay. Now, getting back to Skout, when you join Skout,

12:13PM 7 was there some kind of an agreement that you engaged in with

12:13PM 8 the company Skout about allowing you to participate?

12:14PM 9 A Yes. You have to be over 18 to be on Skout.

12:14PM 10 Q And are there other conditions also?

12:14PM 11 A I know you got to be an adult over 18. I believe you have

12:14PM 12 to have a credit card too.

12:14PM 13 Q Okay. Now, are there rules of conduct?

12:14PM 14 A No. It's just chatting, like what you want to do on -- on

12:14PM 15 Skout, like chat and hooking up and other -- it doesn't have

12:14PM 16 any -- I don't believe any guidelines really.

12:14PM 17 Q Is there a way that a person using Skout can register some

12:14PM 18 kind of grievance or objection to any interactions that they

12:14PM 19 are exposed to on Skout that you're aware of?

12:14PM 20 A Not that I know.

12:14PM 21 Q Okay. The -- the contract you entered into when you --

12:15PM 22 when you applied and were allowed to participate in Skout, that

12:15PM 23 you saw on your cellphone?

12:15PM 24 A Yes.

12:15PM 25 Q Was -- was it long?

12:15PM 1 A What you mean by long?

12:15PM 2 Q That is the -- the agreement that --

12:15PM 3 A Oh, yes.

12:15PM 4 Q Do you remember any other terms that were presented?

12:15PM 5 A I know you have to be an adult and you're pretty much  
12:15PM 6 protected on Skout.

12:15PM 7 Q Okay. Was the -- the provision of having to be 18 or  
12:15PM 8 older on Skout one of the earlier statements in the contract?

12:15PM 9 A Yes.

12:15PM 10 Q All right. Now, when you -- when you began communicating  
12:15PM 11 with Kiana, what did you -- who did you think you were speaking  
12:16PM 12 with or communicating with?

12:16PM 13 A 35-year-old female.

12:16PM 14 Q And 35 based on?

12:16PM 15 A Her profile.

12:16PM 16 Q Her profile.

12:16PM 17 Now, your experience with these social websites, is it  
12:16PM 18 the case that you've always had positive interactions with  
12:16PM 19 people that you've encountered? Sort of -- go ahead.

12:16PM 20 A Not really, some they act like they're something that  
12:16PM 21 they're not. Like some is like mahus, but they act like  
12:16PM 22 they're girls. And then after they come out and they say, oh,  
12:16PM 23 I actually mahu.

12:16PM 24 Q Now, so people present themselves and then they -- you  
12:17PM 25 find out something else. They tell you something that make you

12:17PM 1 realize like a person's sexual orientation that you -- you

12:17PM 2 don't want to have anything to do with. And did you continue

12:17PM 3 with those or did you terminate them?

12:17PM 4 A Sometimes I just role play with them like what they want.

12:17PM 5 Like they act like they like they can be something and, you

12:17PM 6 know, just play the role and ask question and answer question.

12:17PM 7 Q So you say you roll with them. Would you go along and you

12:17PM 8 just continue interacting?

12:17PM 9 A Yeah.

12:17PM 10 Q All right. Now, on the -- the night when your -- of your

12:17PM 11 arrest, did you have something to do at a later point in time?

12:17PM 12 A Yes.

12:18PM 13 Q And in the evening or what was that?

12:18PM 14 A My wife now, my girlfriend then, was working. So after

12:18PM 15 she finished work, I would pick her up and then we would go to

12:18PM 16 her --

12:18PM 17 THE COURT REPORTER: Could you say that again?

12:18PM 18 THE WITNESS: She works nighttime, so after she

12:18PM 19 finishes work, I would pick her up and we would go to her

12:18PM 20 place.

12:18PM 21 BY MR. MOTTL:

12:18PM 22 Q So you were supposed to pick her up --

12:18PM 23 A Yeah.

12:18PM 24 Q -- at work later on that evening?

12:18PM 25 A Yes.

12:18PM 1 Q But you didn't. You communicated with a person you  
12:18PM 2 believed was Kiana and agreed to meet her in the street -- on a  
12:18PM 3 street in Kihei; is that correct?  
12:18PM 4 A Yes.  
12:18PM 5 Q Why did you do that?  
12:18PM 6 A I just went down to be curious who -- who that was and she  
12:19PM 7 said that she was having drama and whatnot.  
12:19PM 8 Q Could you repeat that answer, please?  
12:19PM 9 A She said she was having drama so I just went down identify  
12:19PM 10 that this was an adult and she was.  
12:19PM 11 Q Okay. Now, did you -- did you see her or what -- an  
12:19PM 12 individual that you believed was this Kiana who you had agreed  
12:19PM 13 to meet there?  
12:19PM 14 A Yes.  
12:19PM 15 Q And where were they when you -- when you saw this person  
12:19PM 16 that you believed was Kiana?  
12:19PM 17 A She was across the street from where I approached.  
12:19PM 18 Q And you heard the testimony by the police officer. You  
12:19PM 19 basically tried to -- you were across the street from her and  
12:19PM 20 you tried to -- what did you do? Try to alert her that you  
12:20PM 21 were there?  
12:20PM 22 A Yes.  
12:20PM 23 Q Did you use your lights, horn?  
12:20PM 24 A Yeah, my lights, I flashed my highlights.  
12:20PM 25 Q All right. And -- and that's -- what happened then?



12:20PM 1 A Then I was surrounded by police and I got arrested.

12:20PM 2 Q And you saw the -- the tape of the statement you gave to  
12:20PM 3 the -- the two detectives, correct?

12:20PM 4 A Yes.

12:20PM 5 Q And you waived your rights and you spoke to them, correct?

12:20PM 6 A Yes.

12:20PM 7 Q Okay. When did you become aware that that person you were  
12:20PM 8 talking to was not a female but rather a -- a male detective?  
12:20PM 9 Detective Surina testified and he was the one that was texting  
12:20PM 10 you. When did you first discover that?

12:21PM 11 A That day he testified that he was the one.

12:21PM 12 Q Oh, but him specifically, when did you discover that --  
12:21PM 13 I'm rephrasing the question.

12:21PM 14 When did you discover that Kiana was not a woman but  
12:21PM 15 was a undercover police officer?

12:21PM 16 A In that interview.

12:21PM 17 Q In the interview with the -- the two detectives?

12:21PM 18 A Yes.

12:21PM 19 Q All right. How did you feel -- how did you feel when  
12:21PM 20 you -- when you were arrested?

12:21PM 21 A I was kind of surprised and shocked.

12:21PM 22 Q Because you looked pretty calm and, oh, somewhat  
12:21PM 23 uncertain, so you felt all right?

12:21PM 24 A Not all right.

12:21PM 25 Q Yeah, yeah.

12:21PM 1 A I was kind of in my mind like kind of like what's going  
12:22PM 2 on.

12:22PM 3 Q Now, the -- the interactions you had with the detective in  
12:22PM 4 the persona of Kiana, what type of impression did you get of  
12:22PM 5 the person that he was representing himself as Kiana? You  
12:22PM 6 mentioned drama earlier?

12:22PM 7 A Right.

12:22PM 8 Q Yeah, and that's -- and --

12:22PM 9 A And stressing. Under stress.

12:22PM 10 Q Okay. Anything else?

12:22PM 11 A That's pretty much what they on the Skout said that she  
12:23PM 12 was on the -- having drama and under stress.

12:23PM 13 Q That's what she told you on --

12:23PM 14 A Skout.

12:23PM 15 Q -- Skout. And -- and the texting that went on --

12:23PM 16 A Yes.

12:23PM 17 Q -- in addition to Skout.

12:23PM 18 MR. MOTTL: All right. I have no further questions.

12:23PM 19 Thank you. Oh, excuse me, if I may take that back?

12:23PM 20 THE COURT: Go ahead.

12:23PM 21 MR. MOTTL: Your Honor?

12:23PM 22 THE COURT: Yes, go ahead.

12:23PM 23 BY MR. MOTTL:

12:23PM 24 Q You -- Mr. Cummings, you work full time? You are working  
12:23PM 25 full time with the city -- with the County of Maui at the time

12:23PM 1 of this incident, correct?

12:23PM 2 A Yes.

12:23PM 3 Q Yeah. What did you do in your spare time?

12:23PM 4 A I ran a county soft -- not county but I ran softball

12:23PM 5 leagues in Kihei for adult men and 40-and-over league for like

12:23PM 6 on Maui. They call it the makule league softball.

12:23PM 7 Q All right. Now, how long had you been doing that?

12:24PM 8 A I've been running leagues maybe close to ten years. I was

12:24PM 9 approached by the county recreation. They said they're not

12:24PM 10 going to run men's league anymore so they approached me if I

12:24PM 11 would over -- like oversee it and overtake it, the leagues.

12:24PM 12 And so from there I started doing the men's league and the

12:24PM 13 makule league and then they started doing men's league again.

12:24PM 14 I approached them if they wanted to take it back and they said

12:24PM 15 no you're going a good job. You can keep on running the

12:24PM 16 leagues.

12:24PM 17 Q Now, the leagues ran during a certain season?

12:24PM 18 A No. It was all year round but like we will have one

12:24PM 19 season like three or four months, take a break for a month or

12:24PM 20 so then we'd start again. So it pretty much ran all year long.

12:24PM 21 Q And there were tournaments?

12:24PM 22 A Yes, I ran tournaments too.

12:25PM 23 Q And there were -- there were statewide competitions that

12:25PM 24 he engaged in too, yes?

12:25PM 25 A Oh, yes, yes.

12:25PM 1 Q And where were those or what were those about?

12:25PM 2 A All the islands would have softball tournaments, Oahu, Big  
12:25PM 3 Island Kona side, Kauai, Maui.

12:25PM 4 Q And would -- now, you were part of the -- you were the  
12:25PM 5 organizer and you sort of kept the -- the league going. Were  
12:25PM 6 you a member of a team?

12:25PM 7 A Yes. I had a couple teams.

12:25PM 8 Q Okay. And you played on those teams?

12:25PM 9 A Yes.

12:25PM 10 Q How did those teams -- how did you fund the activities of  
12:25PM 11 the league during the tournaments? How was that done? Was the  
12:25PM 12 county contributing money?

12:26PM 13 A No. It was all made by our team. I would put together  
12:26PM 14 the tournament, like do the foundation, getting the fields, the  
12:26PM 15 umpires --

12:26PM 16 THE COURT REPORTER: Excuse me, the foundation?

12:26PM 17 THE WITNESS: Of the tournament -- getting the field  
12:26PM 18 permits, the insurance, ball, like making sure we get balls,  
12:26PM 19 setting up the concession and my team would participate in  
12:26PM 20 performing the tournament, cleaning up, cleaning up the area,  
12:26PM 21 keeping score, umpiring, doing the concession. And from those  
12:26PM 22 proceeds, it would go to our uniforms, and if I had three  
12:26PM 23 tournaments throughout the year --

12:26PM 24 THE COURT: I'm sorry to interrupt. What relevance is  
12:26PM 25 this?



12:26PM 1 MR. MOTTL: The -- the inference is that, one,  
12:27PM 2 Mr. Cummings was a -- a person who spent his time driving  
12:27PM 3 around selling drugs. We are -- that's not the case. He was a  
12:27PM 4 busy person, he was a hard working person throughout since high  
12:27PM 5 school. And that certainly is important that's what he did  
12:27PM 6 not --

12:27PM 7 THE COURT: I disagree. Do you have any other  
12:27PM 8 questions?

12:27PM 9 MR. MOTTL: I will -- I'll wrap it up, if that's the  
12:27PM 10 case, Your Honor.

12:27PM 11 BY MR. MOTTL:

12:27PM 12 Q The assertion is in the complaint that you intended to  
12:27PM 13 engage in sexual intercourse with a minor, this minor, or you  
12:28PM 14 attempted to. It was a police officer. But that was your  
12:28PM 15 intention. Was that at all your intention?

12:28PM 16 A Not at all.

12:28PM 17 Q Okay. Do you engage in -- I mean, do you -- you look at  
12:28PM 18 pornography?

12:28PM 19 A No.

12:28PM 20 Q Do you read pornography?

12:28PM 21 A No.

12:28PM 22 Q No.

12:28PM 23 You watch television?

12:28PM 24 A Yes.

12:28PM 25 Q Okay. Now, on television there are lots -- many kinds of

12:28PM 1 shows. Some you get pretty -- pretty adult, but you see a lot

12:28PM 2 on these days, so there's a lot of -- a lot of language.

12:28PM 3 Now, you use certain language in your texting to the

12:28PM 4 detective. Now, that's language you -- is that language you --

12:29PM 5 you heard between actors and actresses on television?

12:29PM 6 A No.

12:29PM 7 Q Where did you -- where did you get that -- those terms

12:29PM 8 that you came up and you mentioned a number of things to -- to

12:29PM 9 Kiana?

12:29PM 10 A I just -- I didn't know what to say. She kept asking what

12:29PM 11 you like do, what you like do, and I never know what for say,

12:29PM 12 so I just wen' type and I send 'em.

12:29PM 13 MR. MOTTL: All right. No further questions, Your

12:29PM 14 Honor.

12:29PM 15 THE COURT: Ms. Olson?

12:29PM 16 CROSS-EXAMINATION

12:29PM 17 BY MS. OLSON:

12:29PM 18 Q Good afternoon.

12:29PM 19 A Good afternoon.

12:29PM 20 MS. OLSON: Could I please ask to publish previously

12:30PM 21 exhibit -- Exhibit 1 previously admitted.

12:30PM 22 THE COURT: Yes, go ahead.

12:30PM 23 BY MS. OLSON:

12:30PM 24 Q Mr. Cummings, can you see Exhibit 1?

12:30PM 25 A Yes.

12:30PM 1 Q What's this?

12:30PM 2 A This is an unfinished profile of Kiana.

12:30PM 3 Q This is the person that you -- this is the profile you  
12:30PM 4 contacted in March 2020?

12:30PM 5 A It wasn't like this. It had all the information.

12:30PM 6 Q This is the photograph though that you saw in the profile  
12:30PM 7 you contacted?

12:30PM 8 A I can't recall.

12:31PM 9 MS. OLSON: Permission to publish Exhibit 2.

12:31PM 10 THE COURT: Yes, it's admitted. Go ahead.

12:31PM 11 BY MS. OLSON:

12:31PM 12 Q You see the top of this page Exhibit 2?

12:31PM 13 A Yes.

12:31PM 14 Q Do you see it says, "Duckfat34"?

12:31PM 15 A Yes.

12:31PM 16 Q That was your Skout profile name?

12:31PM 17 A Yes.

12:31PM 18 Q You see it says, "109"?

12:31PM 19 A Yes.

12:31PM 20 Q That was your purported age?

12:31PM 21 A That was the age that you can put but when you get into  
12:31PM 22 Skout you have to put your birth date.

12:31PM 23 Q You weren't 109 at the time, right?

12:31PM 24 A No.

12:31PM 25 Q So you made up that age when you filled out your profile?

12:32PM 1 A To get on Skout, you have to be an adult so you have to  
12:32PM 2 put your proper age but you can put whatever you want on your  
12:32PM 3 headline.  
12:32PM 4 Q But you didn't put your proper age, right?  
12:32PM 5 A When I entered Skout, I did.  
12:32PM 6 Q It says 109 years old here at the top of page two,  
12:32PM 7 correct?  
12:32PM 8 A You can put your own headline.  
12:32PM 9 Q So you wrote in 109?  
12:32PM 10 A Yes.  
12:32PM 11 Q You said today you believed she was 35; Kiana was 35 at  
12:32PM 12 the time in March 2020 when you were exchanging messages?  
12:32PM 13 A I believe she was over 18 but her Skout profile said she  
12:33PM 14 was 35.  
12:33PM 15 Q Did you say you believed she was 35?  
12:33PM 16 A Yes.  
12:33PM 17 MS. OLSON: I'd like to publish Exhibit 4.  
12:33PM 18 THE COURT: Yes, go ahead.  
12:33PM 19 BY MS. OLSON:  
12:33PM 20 Q Do you see page one of Exhibit 4, Mr. Cummings?  
12:33PM 21 A Yes.  
12:33PM 22 Q Kiana, or the undercover chatter, told you she was  
12:33PM 23 13 years old, correct?  
12:33PM 24 A It doesn't say anything about 13.  
12:34PM 25 Q Can you see the yellow circle I just added to the exhibit?



12:34PM 1 A Yes.

12:34PM 2 Q Could you please read that?

12:34PM 3 A "Cool, well, upfront I'm 14, well, I turn 14 next month.

12:34PM 4 Just hate stupid kids my age."

12:34PM 5 Q So she did tell you she wasn't yet 14?

12:34PM 6 A Yes.

12:34PM 7 Q When I say "she," I mean Kiana or the undercover chatter  
12:34PM 8 in this context.

12:35PM 9 Can you please read what I just circled underneath  
12:35PM 10 what you just read?

12:35PM 11 A "Yeah, I grant you this once tonight. I'll come pick you  
12:35PM 12 up."

12:35PM 13 Q So as soon as he said -- as soon as Kiana said she was 13,  
12:35PM 14 you said you'd pick her up?

12:35PM 15 A I believe I was texting with my girlfriend at that time.  
12:35PM 16 I was mass -- mass like texting and -- back and forth with  
12:35PM 17 Skout and texting my girlfriend.

12:35PM 18 Q So you thought that this was suddenly a different  
12:35PM 19 conversation with a different person?

12:35PM 20 A Yes. Because usually during the weekends, I don't stay  
12:35PM 21 out with my girlfriend but she asked me to come stay with her  
12:35PM 22 that night. So I told her, "Okay, I grant you this. I'll come  
12:35PM 23 pick you up."

12:35PM 24 Q Okay. But a couple lines lower, you say, "Hang out  
12:36PM 25 tonight."

12:36PM 1 Are you still saying you thought that was to your

12:36PM 2 girlfriend?

12:36PM 3 A I'm not too sure what -- if I was coming -- if that was

12:36PM 4 for her or not.

12:36PM 5 Q Then you said, "Come down rescue you for a few horse from

12:36PM 6 your cousin."

12:36PM 7 Did you think that was directed to your girlfriend?

12:36PM 8 A No.

12:36PM 9 Q You thought that that was directed to Kiana?

12:36PM 10 A Yes.

12:36PM 11 Q Please turn to page three of Exhibit 4. Can you please

12:37PM 12 read what I just circled starting with what kind of fun?

12:37PM 13 A "What kind of fun you gonna do with me or with a 13-year

12:37PM 14 old girl? I can't go into bars."

12:37PM 15 "We can go to the beach and have our own fun. Watch

12:37PM 16 the moon reflect on your body."

12:37PM 17 Q So Kiana, or the undercover, told you a second time here

12:37PM 18 that Kiana was 13, correct?

12:37PM 19 A Yes.

12:37PM 20 Q And you responded to that message, right?

12:37PM 21 A Yes. I believe it was just role playing and just trying

12:37PM 22 out her number. Because every time I saw that, I would go back

12:37PM 23 to her profile to make sure I was on Skout on a adult site

12:37PM 24 where I got this information.

12:37PM 25 Q Please turn to page 11 of the same exhibit. Can you

12:38PM 1 please read what I just circled towards the bottom of page 11

12:38PM 2 of this exhibit?

12:39PM 3 A "You okay with me being 13?"

12:39PM 4 "Okay, so long as you okay with me."

12:39PM 5 "Yeah, yeah. So what you like looking for do with me  
12:39PM 6 being 13? I can't go to bars."

12:39PM 7 Q So Kiana told you a third and fourth time here she or he  
12:39PM 8 was 13, correct?

12:39PM 9 A Yes.

12:39PM 10 Q And what was your response -- and you said it was okay  
12:39PM 11 with you, right?

12:39PM 12 A Yeah, I thought we was role playing just we're in there  
12:39PM 13 all day, yeah. I asking and answering questions.

12:39PM 14 Q And you thought that I can't go to bars was also role  
12:39PM 15 playing?

12:39PM 16 A Yeah.

12:39PM 17 Q Can you please read those lines I just circled in yellow  
12:40PM 18 in the same exhibit?

12:40PM 19 A "How old you anyway?"

12:40PM 20 "31."

12:40PM 21 Q But you said you were 31 years old?

12:40PM 22 A Yeah.

12:40PM 23 Q That wasn't correct, right?

12:40PM 24 A No.

12:40PM 25 Q You were 46 at the time?

12:40PM 1 A 46 or 47, yeah.

12:40PM 2 Q You and Kiana talked about Kiana starting high school,  
12:40PM 3 right?

12:40PM 4 A Starting high school. I don't know about starting high  
12:40PM 5 school.

12:40PM 6 Q I didn't hear the answer.

12:41PM 7 A I don't know about starting high school. I don't recall  
12:41PM 8 that.

12:41PM 9 Q You talked to Kiana about going to -- how she was going to  
12:41PM 10 go to Baldwin?

12:41PM 11 A She said she went to Baldwin.

12:41PM 12 Q And you thought that was part of a role play also?

12:41PM 13 A Yeah, it's a basic question you can ask anybody, what  
12:41PM 14 school you go to.

12:41PM 15 Q Please turn to page eight of the same exhibit. Can you  
12:42PM 16 please read the part I just circled in yellow starting with, we  
12:42PM 17 not playing games.

12:42PM 18 A "We not playing games, babe. I'll spoil you if you want  
12:42PM 19 to hang out with me. You just be real too. What we get going  
12:42PM 20 on between us no more need know -- need to know where or how  
12:42PM 21 you being spoiled and taken care of."

12:42PM 22 I am, oh -- "Am being real. That's why I want to  
12:42PM 23 know, not anyone else." Laugh out loud or "LOL." "Just saying  
12:42PM 24 cause I can't just break out whenever. My parents -- my  
12:42PM 25 parents come back tomorrow. My cousin's parents come back



12:42PM 1 tomorrow."

12:42PM 2 Q So you told Kiana this wasn't a game, right?

12:42PM 3 A Yeah.

12:42PM 4 Q And you said, "No one needed to know where or how you  
12:43PM 5 being spoiled"?

12:43PM 6 A Yes.

12:43PM 7 Q So you were saying you would keep it a secret?

12:43PM 8 A Secret but no -- nobody got to know how you getting --  
12:43PM 9 getting spoiled.

12:43PM 10 Q Can you please read the yellow -- the -- the text that I  
12:43PM 11 just highlighted in yellow on page eight?

12:43PM 12 A "Look like spring break going go on all month for you.  
12:43PM 13 Where you go high school?"

12:43PM 14 "Ha ha right? Just started at Baldwin."

12:44PM 15 MS. OLSON: You can take down Exhibit 4 for now,  
12:44PM 16 please.

12:44PM 17 BY MS. OLSON:

12:44PM 18 Q You participated in a -- in an interview with law  
12:44PM 19 enforcement officers after you were arrested on March 15, 2020?

12:44PM 20 A Yes.

12:44PM 21 Q That was voluntary?

12:44PM 22 A Not voluntary. They pulled me into the -- into the room  
12:44PM 23 and they came in.

12:44PM 24 Q During that interview, you never told law enforcement that  
12:44PM 25 you believed Kiana was 35, correct?

12:44PM 1 A I didn't tell -- that I believed she was over 18.

12:45PM 2 Q So the -- the first thing you said when asked about

12:45PM 3 Kiana's age was Kiana was 18, right?

12:45PM 4 A Yes.

12:45PM 5 Q And then you changed that answer after that, right?

12:45PM 6 A Yes.

12:45PM 7 Q You said you believed Kiana was 13 maybe going to be 14,

12:45PM 8 right?

12:45PM 9 A She said on the site that she was 13 going to be 14.

12:45PM 10 Q And you said you knew she was very young, right?

12:45PM 11 A On the site, she said she was young.

12:45PM 12 Q Okay. You said that you drove to meet Kiana in person

12:45PM 13 because you were just curious to meet her?

12:46PM 14 A Yes.

12:46PM 15 Q Not for sex?

12:46PM 16 A No.

12:46PM 17 MS. OLSON: Please pull up Exhibit 4, again, if I may.

12:46PM 18 Please turn to page 13.

12:46PM 19 BY MS. OLSON:

12:47PM 20 Q Can you please read what I just circled on page 13?

12:47PM 21 A "What do you want to do for fun" -- I cannot see that last

12:47PM 22 word. "We walking back up."

12:47PM 23 "Eat your pussy."

12:47PM 24 Q Please turn to page 14. Can you please read the text

12:48PM 25 messages I just circled on page 14?

12:48PM 1 A "I'm going to eat you till you come a few times on my face  
12:48PM 2 babes. Get your pussy so wet.  
12:48PM 3 "LOL. Make it rain." "Lololol."  
12:48PM 4 "Have you slowly" -- sat on my -- "sat on me taking me  
12:48PM 5 in you slowly. You must be so tight. You're going to squirt  
12:48PM 6 when I make you cum. Can't see with the light in the back."  
12:48PM 7 Q You started the graphic sexual talk during this chat or  
12:48PM 8 during the text message conversation, right?  
12:49PM 9 A Yeah.  
12:49PM 10 Q You asked Kiana, or the undercover chatter, repeatedly  
12:49PM 11 over three days to meet you in person, correct?  
12:49PM 12 A Yes.  
12:49PM 13 Q You offered to take her shopping?  
12:49PM 14 A Yes.  
12:49PM 15 Q You said you'd bring her cash and you sent two picture --  
12:49PM 16 two photographs of stacks of cash, correct?  
12:49PM 17 A I didn't say I would bring her cash. I said I would have  
12:49PM 18 cash with me.  
12:49PM 19 Q Please turn to page five of the same exhibit. What's that  
12:50PM 20 image of that I just circled?  
12:50PM 21 A That's a Photoshop picture that I -- I took from existing  
12:50PM 22 photo that I saw and I had it on my -- in my library or  
12:50PM 23 whatever you picture -- picture storage of cash.  
12:50PM 24 Q And you had approximately \$745 in your truck when you were  
12:50PM 25 arrested, correct, in cash?

12:50PM 1 A No. 645.

12:50PM 2 Q You didn't have another hundred dollar bill hidden in your  
12:50PM 3 cellphone protector?

12:50PM 4 A Oh, yeah, in my case, yeah.

12:50PM 5 Q So a total of about \$745 in cash?

12:50PM 6 A Yes.

12:51PM 7 Q You told Kiana you would bring weed or potentially give  
12:51PM 8 Kiana weed?

12:51PM 9 A I had weed with me.

12:51PM 10 Q But you said you would bring it, correct?

12:51PM 11 A Yes. I have a medical card.

12:51PM 12 Q And you, in fact, did have various forms of marijuana, THC  
12:51PM 13 in the truck when you were arrested, correct?

12:51PM 14 A Yes.

12:51PM 15 Q You initiated contact and conversation with Kiana or the  
12:51PM 16 undercover for three days in a row, correct?

12:51PM 17 A Yes.

12:51PM 18 Q You asked Kiana to send you photographs and/or videos  
12:51PM 19 approximately 14 times during the conversation, correct?

12:52PM 20 A Yeah, I'm not sure how -- exactly how many.

12:52PM 21 Q Including in the shower?

12:52PM 22 A Yes.

12:52PM 23 Q You never once expressed any concern in the messages about  
12:52PM 24 the age of 13, correct?

12:52PM 25 A I never believed she was 13.



12:52PM 1 Q At some point in the conversation, Kiana told you about

12:52PM 2 where she was staying that night, right?

12:52PM 3 A Yes.

12:52PM 4 Q And you immediately looked up the location in Apple Maps,

12:52PM 5 correct?

12:52PM 6 A Yes.

12:52PM 7 Q Within approximately a minute?

12:52PM 8 A Yeah.

12:52PM 9 Q And then you drove -- you guys agreed to meet at a

12:52PM 10 location and you drove there?

12:53PM 11 A Yes.

12:53PM 12 Q Did you text when you -- when you believed you saw Kiana,

12:53PM 13 you flash your lights?

12:53PM 14 A Yes.

12:53PM 15 Q And you texted, "Come jump in"?

12:53PM 16 A Yeah.

12:53PM 17 Q Can we please turn to -- oh, we're already page five of

12:53PM 18 Exhibit 4. One more question about this. Can you please read

12:53PM 19 what I just circled?

12:53PM 20 A How can I get -- How can I get one of those stacks!!!"

12:53PM 21 "When you ride with me. Is tonight going to happen

12:53PM 22 for us or just talk?"

12:54PM 23 MR. OLSON: No more questions. Thank you.

12:54PM 24 THE COURT: Mr. Mottl, any redirect?

12:54PM 25 MR. MOTTL: Briefly, Your Honor.

12:54PM 1 REDIRECT EXAMINATION

12:54PM 2 BY MR. MOTTL:

12:54PM 3 Q Mr. Cummings.

12:54PM 4 A Yeah.

12:54PM 5 Q Earlier you testified that over a period of time you had

12:54PM 6 communicated on Skout as well as other sites with individuals

12:54PM 7 where you engaged in this social networking communication?

12:54PM 8 A At this time, only Skout I was on.

12:54PM 9 Q I beg your pardon?

12:54PM 10 A At this -- this time -- that time I was only on Skout.

12:54PM 11 Q Oh, correct.

12:54PM 12 But previously you -- you'd been on other sites?

12:55PM 13 A I'd been on a few.

12:55PM 14 Q And you communicated, texted back and forth with people?

12:55PM 15 A Yes.

12:55PM 16 Q Now, on both sides in this conversation, this interaction

12:55PM 17 that you had with Kiana, there was a lot of false information

12:55PM 18 passed from you to her or him?

12:55PM 19 A Yes, yeah.

12:55PM 20 Q And from me to you. And you mentioned, wasn't the word --

12:55PM 21 her or -- her word was drama, yours was -- you didn't use the

12:55PM 22 word fantasy but basically you engaged in --

12:55PM 23 MS. OLSON: Objection, leading.

12:55PM 24 BY MR. MOTTL:

12:55PM 25 Q -- same thing, said you were -- strike that.

12:55PM 1 Go ahead, Your Honor.

12:55PM 2 MR. MOTTL: Go ahead, Your Honor.

12:55PM 3 THE COURT: When I hear a question, I'll rule on the  
12:56PM 4 objection.

12:56PM 5 MR. MOTTL: Okay.

12:56PM 6 BY MR. MOTTL:

12:56PM 7 Q On the face page you said you were 109 years old. By  
12:56PM 8 contract you were over 18, you were an adult?

12:56PM 9 A Yes.

12:56PM 10 Q And then you told her you were 31?

12:56PM 11 A Yes.

12:56PM 12 THE COURT: The objection is sustained. Stop leading  
12:56PM 13 your witness.

12:56PM 14 BY MR. MOTTL:

12:56PM 15 Q You responded to a question saying that you never thought  
12:56PM 16 or you never knew and believed, I forget your exact -- the  
12:56PM 17 exact words, that Kiana was who she was saying she was.  
12:56PM 18 Certainly in relation to her age --

12:56PM 19 MS. OLSON: Objection, leading.

12:56PM 20 THE COURT: Sustained.

12:56PM 21 BY MR. MOTTL:

12:56PM 22 Q Did you believe that there was a person Kiana who was as  
12:57PM 23 she represented herself to be?

12:57PM 24 A I believe she was over 18 and 35 it said on the stuff but  
12:57PM 25 I believe she was over 18 from being on Skout.

12:57PM 1 Q And how about these -- how about the other things that  
12:57PM 2 said her cousin, high school she went to. Did you believe  
12:57PM 3 those? Were you -- were you taking those as truth?

12:57PM 4 A I didn't believe she was in high school but I believe she  
12:57PM 5 went to Baldwin. It was like I believed we was role playing  
12:57PM 6 just role playing and see where it goes. You ask a question,  
12:57PM 7 I'll answer. I ask a question, you answer it.

12:57PM 8 Q Had you -- earlier you testified that you had exchanged  
12:58PM 9 messages with someone who turned out to be gay. Was the  
12:58PM 10 interaction similar in terms of the truthfulness being somewhat  
12:58PM 11 questionable?

12:58PM 12 A Yeah.

12:58PM 13 Q And was that something you experienced more than once?

12:58PM 14 A I had interactions with transvestites and whatnot but...

12:58PM 15 Q Beg your pardon?

12:58PM 16 A I had communications with like transvestites and, you  
12:58PM 17 know, other people trying to act like something they're not.

12:58PM 18 MR. MOTTL: All right. No further questions.

12:58PM 19 THE COURT: You may step down.

12:58PM 20 Mr. Mottl, your next witness please.

12:58PM 21 MR. MOTTL: Yes, Vianna Cummings is the next witness.

01:00PM 22 THE CLERK: Please raise your right hand.

01:00PM 23 VIANNA CUMMINGS,

01:00PM 24 called as a witness, having been first duly sworn, was examined  
01:00PM 25 and testified as follows:



01:00PM 1 THE CLERK: Please state your full name and spell your  
01:00PM 2 last name for the record.

01:00PM 3 THE WITNESS: Sure. It's Vianna L. Cummings,  
01:00PM 4 C-U-M-M-I-N-G-S.

01:00PM 5 DIRECT EXAMINATION

01:00PM 6 BY MR. MOTT: L:

01:00PM 7 Q Ms. Cummings, you know the defendant, Lyle Cummings?

01:00PM 8 A Yes. He's my husband.

01:00PM 9 Q Your husband?

01:00PM 10 A Um-hm.

01:00PM 11 Q How long have you known -- how long have you known Lyle?

01:00PM 12 A I've known Lyle for a total of 15 years.

01:00PM 13 Q And how did you first get to know him?

01:00PM 14 A Through -- I play basketball so he was part of the parks  
01:00PM 15 and recreation crew that would come and keep score and help  
01:00PM 16 with facilitating tournaments and basketball games.

01:01PM 17 Q Now, you knew him at the -- you're familiar with the  
01:01PM 18 incident that led to his arrest?

01:01PM 19 A Yes.

01:01PM 20 Q Now, how long -- you were his girlfriend at the time?

01:01PM 21 A Yes.

01:01PM 22 Q How long had you been on that relationship?

01:01PM 23 A Prior to that, about three to five years off and on.

01:01PM 24 Q Okay. Now, you -- have you been married before?

01:01PM 25 A No.

01:01PM 1 Q No.

01:01PM 2 And you have children though, correct?

01:01PM 3 A Yes, I do.

01:01PM 4 Q How old? You have two children?

01:01PM 5 A Yes, I do.

01:01PM 6 Q A boy and a girl?

01:01PM 7 A Yes, I do.

01:01PM 8 Q Now, at the time of this -- this incident, where were you

01:01PM 9 living?

01:01PM 10 A I was living in Kihei. I had my own home on South Kihei

01:01PM 11 Road.

01:01PM 12 Q Okay. And you were working?

01:01PM 13 A Yes.

01:01PM 14 Q Okay. Now, do you have any -- did you go to high school

01:01PM 15 on Maui?

01:01PM 16 A Yes, I did. I went to Baldwin High School for my freshman

01:01PM 17 to junior year and then I finished over at Maui High in my

01:01PM 18 senior year.

01:01PM 19 Q And did you continue with a higher education?

01:02PM 20 A Yes. And then I went to Maui Community College West Manoa

01:02PM 21 program on Maui.

01:02PM 22 Q And what did you study there?

01:02PM 23 A Business.

01:02PM 24 Q And did you graduate? You get a degree?

01:02PM 25 A I got my liberal arts degree. I didn't finish my business

01:02PM 1 degree.

01:02PM 2 Q Okay. Now, at the time you were working where the time of  
01:02PM 3 this incident in 2020?

01:02PM 4 A I was working my job at Three's Bar & Grill which is on  
01:02PM 5 South Kihei Road.

01:02PM 6 Q Okay. Now, do you have a clear recollection of the events  
01:02PM 7 of that day?

01:02PM 8 A I do have a vivid recollection of what happened that day.

01:02PM 9 Q Yeah, could you -- could you start at noon and describe  
01:02PM 10 what you did and your contact with Lyle?

01:02PM 11 A Okay. So noon I started work at 3:00 p.m. that day. And  
01:03PM 12 it was -- we made arrangements that he was coming to pick me up  
01:03PM 13 after I was done with my shift on March -- what day was that --  
01:03PM 14 13th, 15th?

01:03PM 15 Q 15th, correct.

01:03PM 16 A Yeah. He was supposed to pick me up after my shift. So  
01:03PM 17 we were talking back and forth and how he was going to  
01:03PM 18 coordinate and what time he was come and pick me up and that he  
01:03PM 19 was going to spend the night that night that he got picked up  
01:03PM 20 over at my house, too, so he could go to work on the Monday,  
01:03PM 21 which he works right up the street from me at the parks and  
01:03PM 22 county rec in Kihei.

01:03PM 23 Q And -- and did he pick you up?

01:03PM 24 A No, he did not.

01:03PM 25 Q And what did you wind up doing the rest of the evening?

01:03PM 1 A So when it came close to the time where I was texting him  
01:03PM 2 and calling him and asking him when he was going to pick me up,  
01:03PM 3 I had no reply whatsoever. So I ended up walking home that  
01:04PM 4 night not knowing what happened.

01:04PM 5 Q And did you get a call later that evening or --

01:04PM 6 A I had a call two days later when he was released. He  
01:04PM 7 actually came down and told me exactly what happened. And the  
01:04PM 8 reason why he didn't answer the phone and where he was and that  
01:04PM 9 he got picked up supposedly talking to a 13-year-old on a chat  
01:04PM 10 room.

01:04PM 11 Q And that he was arrested for that?

01:04PM 12 A That he was arrested for that.

01:04PM 13 Q How did you respond to that?

01:04PM 14 A I was blown out of the water. Like, I didn't -- I thought  
01:04PM 15 he was lying to me at -- at first. I was, like, he would never  
01:04PM 16 engage a 13-year-old kid. Like, I don't under -- I don't know  
01:04PM 17 how -- I don't even know how that part came up to get caught up  
01:04PM 18 in that kind of thing. Like, I've not known him to --

01:05PM 19 Q Did he ever explain in detail of how involved the contact  
01:05PM 20 on Skout --

01:05PM 21 A So --

01:05PM 22 MS. OLSON: Objection, hearsay.

01:05PM 23 THE COURT: Overruled. Go ahead.

01:05PM 24 THE WITNESS: Can you repeat the question one more  
01:05PM 25 time?



01:05PM 1 BY MR. MOTTL:

01:05PM 2 Q Go ahead. No.

01:05PM 3 Did you -- did you ever talk to him about his

01:05PM 4 activities on Skout?

01:05PM 5 A Oh, after the event happened, I did ask him if he had been

01:05PM 6 involved in chat rooms and he's -- I know way back when he did

01:05PM 7 have a couple of apps on his phone. At that point -- at that

01:05PM 8 time in our relationship, it wasn't an exclusive relationship,

01:05PM 9 so I knew that he did chat from time to time but not in any

01:05PM 10 kind of derogatory or underage or anything like that. It was

01:05PM 11 pretty much Facebook and other platforms that he used to chat

01:05PM 12 back and forth, but it was nothing more than chatting back and

01:06PM 13 forth.

01:06PM 14 Q Did you -- did you participate in the activities that he

01:06PM 15 had been involved with the softball league?

01:06PM 16 A Oh, I used to attend them and watch them, sometimes time

01:06PM 17 when I did have time, because I work a lot.

01:06PM 18 Q And, yeah, you were working a lot?

01:06PM 19 A Yes.

01:06PM 20 Q Did you participate -- participate in fundraisers?

01:06PM 21 A Yes. So they used to have a concession and then they

01:06PM 22 had -- they used to have weekend tournament that started on

01:06PM 23 Friday and then would end on Sunday. So he was involved in

01:06PM 24 that a lot and then I was working, if I wasn't at the softball

01:06PM 25 park.

01:06PM 1 Q Now, you -- did you have your children residing with you?

01:06PM 2 A No. So from a younger age, my son had lived on Oahu and

01:06PM 3 has gone to Kamehameha school and then I --

01:06PM 4 MS. OLSON: Objection, relevance.

01:06PM 5 THE COURT: Sustained.

01:07PM 6 BY MR. MOTTL:

01:07PM 7 Q Did you ever observe conduct on the part of Lyle that made

01:07PM 8 you suspect that he had some sort of proclivity towards younger

01:07PM 9 children?

01:07PM 10 A Not at all, not at all.

01:07PM 11 Q Now, was he ever around your daughter?

01:07PM 12 A When we -- when she was younger, yeah.

01:07PM 13 MS. OLSON: Objection, relevance.

01:07PM 14 THE COURT: Where is this going, Counsel?

01:07PM 15 MR. MOTTL: Just -- I'm going just to ask I believe

01:07PM 16 she is going to describe periods of time when they -- her

01:07PM 17 daughter and Lyle were together and what her observations were

01:07PM 18 and what her sense -- sense was as to his perspective

01:07PM 19 towards --

01:07PM 20 THE COURT: The objection is overruled. Go ahead and

01:07PM 21 ask your question.

01:08PM 22 BY MR. MOTTL:

01:08PM 23 Q All right. Do you -- could you describe you're speaking

01:08PM 24 about earlier at a time when you, your daughter and Lyle were

01:08PM 25 engaging in some kind of activity? What were you talking

01:08PM 1 about? Continue, please.

01:08PM 2 A As far as Lyle's behavior towards my daughter, it was more  
01:08PM 3 of a fatherly, if anything, to make sure that she was okay,  
01:08PM 4 make sure that she was getting all her school work done, and  
01:08PM 5 sports and not a situation is that the way it is. It's kind of  
01:08PM 6 hard because I have to be in between and we don't want to  
01:08PM 7 complicate things, but she has a softball career now and we're  
01:08PM 8 just trying to get her to a good place and she doesn't have her  
01:08PM 9 step-dad in her life because of this.

01:08PM 10 MR. MOTTL: All right. Thank you.

01:08PM 11 No further questions, Your Honor.

01:08PM 12 THE COURT: Ms. Olson, any questions?

01:09PM 13 MS. OLSON: Thank you, Your Honor.

01:09PM 14 CROSS-EXAMINATION

01:09PM 15 BY MS. OLSON:

01:09PM 16 Q Just a few. Good afternoon.

01:09PM 17 A Good afternoon.

01:09PM 18 Q You were Mr. Cummings' girlfriend in March 2020?

01:09PM 19 A Yes.

01:09PM 20 Q And you're now married to him?

01:09PM 21 A Yes, I am.

01:09PM 22 Q You don't want to see him get in trouble, right?

01:09PM 23 A No.

01:09PM 24 Q Have you read the Skout messages and text messages at  
01:09PM 25 issue in this case?

01:09PM 1 A Yes, I have.

01:09PM 2 Q You don't watch over him 24/7, right?

01:09PM 3 A Not now. I mean, not -- not prior to the incident but now

01:09PM 4 I do, 24/7.

01:09PM 5 Q Okay. I should -- I should clarify.

01:09PM 6 In March 2020, you weren't watching him 24/7, right?

01:09PM 7 A No.

01:09PM 8 Q He was a grown -- he was a grown man?

01:09PM 9 A Right.

01:09PM 10 Q You know he had a cellphone at the time?

01:09PM 11 A Yes.

01:09PM 12 Q You weren't using that phone, were you?

01:10PM 13 A No, I was not.

01:10PM 14 Q You weren't monitoring the phone, were you?

01:10PM 15 A No, it wasn't -- no.

01:10PM 16 Q You weren't reading all his text messages on the phone,

01:10PM 17 right?

01:10PM 18 A At the time, no.

01:10PM 19 Q You weren't the one texting Kiana from that phone, right?

01:10PM 20 A No.

01:10PM 21 Q Mr. Cummings drove a Toyota Tacoma at that time?

01:10PM 22 A Yes.

01:10PM 23 Q You weren't in that Toyota Tacoma with him the evening of

01:10PM 24 March 15, 2020, right?

01:10PM 25 A No.



01:10PM 1 Q You weren't in the car when he drove to Kilohana Drive?

01:10PM 2 A No.

01:10PM 3 Q And you were not at the scene of the arrest, correct?

01:10PM 4 A No.

01:10PM 5 MS. OLSON: No more questions. Thank you.

01:10PM 6 THE COURT: Mr. Mottl, any further questions?

01:11PM 7 MR. MOTTL: Yes, briefly.

01:11PM 8 REDIRECT EXAMINATION

01:11PM 9 BY MR. MOTTL:

01:11PM 10 Q During your times with Lyle, were you aware that -- that  
01:11PM 11 he was using cocaine?

01:11PM 12 A No.

01:11PM 13 Q You never saw him?

01:11PM 14 A No.

01:11PM 15 Q Did you ever travel in his truck with him?

01:11PM 16 A Many of times but I had no knowledge that there was  
01:11PM 17 cocaine in it.

01:11PM 18 Q Was he -- he had a pretty busy schedule?

01:11PM 19 A Yes, very busy.

01:11PM 20 Q And you also you said you worked long hours?

01:11PM 21 A Yes, um-hm.

01:11PM 22 Q Did he ever seem tired at times?

01:11PM 23 A Did he ever seem tired? Yes.

01:11PM 24 MR. MOTTL: All right. No further questions. Thank  
01:11PM 25 you.

01:11PM 1 THE COURT: You may step down, ma'am.

01:11PM 2 Your next witness.

01:13PM 3 THE CLERK: Please raise your right hand.

01:13PM 4 EVELYN CUMMINGS,

01:13PM 5 called as a witness, having been first duly sworn, was examined

01:13PM 6 and testified as follows:

01:13PM 7 THE CLERK: Please state your full name and spell your

01:13PM 8 last name for the record.

01:13PM 9 THE WITNESS: Evelyn Teruya Cummings, C-U-M-M-I-N-G-S.

01:13PM 10 DIRECT EXAMINATION

01:13PM 11 BY MR. MOTTL:

01:13PM 12 Q Ms. Cummings, are you married?

01:13PM 13 A Yes. Well, I'm a widow.

01:14PM 14 Q You're a widow.

01:14PM 15 Now, do you remember the events of March 16, 2020?

01:14PM 16 A Do I know the events?

01:14PM 17 Q Yeah, when your house was searched?

01:14PM 18 A Yes.

01:14PM 19 Q Now, could you describe how that started that is a search

01:14PM 20 of your home?

01:14PM 21 A The officers came to my door saying that they had a

01:14PM 22 warrant to search my house. He showed it to me and I actually

01:14PM 23 didn't really read it, but I said, okay and then I let them in.

01:14PM 24 There must have been like eight of them. So they came into my

01:14PM 25 house. They asked me which was Lyle's room. They are going to

01:14PM 1 search Lyle's room. So I showed them the bedrooms, all the  
01:14PM 2 three bedrooms and which was Lyle's room. Then they asked me  
01:14PM 3 to go outside with my husband into the -- in the garage and  
01:14PM 4 wait while they searched the house.

01:15PM 5 Q Was your husband present?

01:15PM 6 A At that time, he was, yeah. He was living and he was  
01:15PM 7 present.

01:15PM 8 Q Now, do you recall approximately how long they were there?

01:15PM 9 A I think they were there like maybe an hour. They did a  
01:15PM 10 thorough search of Lyle's room and they also searched the  
01:15PM 11 garage where he has a desk and he has some personal things  
01:15PM 12 there. And he also -- they also went into my bedroom and the  
01:15PM 13 spare room and they searched the outside of the -- the -- the  
01:15PM 14 yard.

01:15PM 15 Q Now, did they take anything away from the search?

01:15PM 16 A They -- they found some money in Lyle's room that he had  
01:15PM 17 in his safe and I think it was two -- two condoms. And when  
01:15PM 18 they completed the search, they called me into the room, the  
01:15PM 19 house, the kitchen, and they had counted the money that they  
01:16PM 20 found. And I think it was like 11,000 and so they counted it  
01:16PM 21 out. And I told the officers that that money was from Lyle's  
01:16PM 22 softball tournament, part of the money was from his softball  
01:16PM 23 tournament and also part of a -- for his savings. And so  
01:16PM 24 they -- they showed me the money and they showed me the condoms  
01:16PM 25 and then they made me sign the whatever they were taking with

01:16PM 1 them. But they also --

01:16PM 2 Q Go ahead. Thank you. Continue.

01:16PM 3 A They also found my wallet in my room which I had stored  
01:16PM 4 away and they also took money from my wallet which was  
01:16PM 5 unreported.

01:16PM 6 Q Did they take anything else other than the --

01:16PM 7 A Not that I am aware of.

01:16PM 8 THE COURT REPORTER: I'm sorry?

01:16PM 9 THE WITNESS: I'm not aware of but if they took  
01:16PM 10 anything else.

01:17PM 11 BY MR. MOTTL:

01:17PM 12 Q Now, the -- the money was from the tournament. Did you  
01:17PM 13 participate in these tournaments at all?

01:17PM 14 A I did a lot of the cooking for the concession.

01:17PM 15 Q So it was a -- a fundraiser, too, you sold food?

01:17PM 16 A Yeah, it was a tournament and then he had a concession  
01:17PM 17 stand, and I prepared a lot of the food and --

01:17PM 18 Q How -- how long has Lyle lived at that home?

01:17PM 19 A Pardon?

01:17PM 20 Q How long did Lyle live at that home?

01:17PM 21 A All his life.

01:17PM 22 Q And is this a home that his grandparents lived also?

01:17PM 23 A Yeah, it's a home that my grandparents -- my parents owned  
01:17PM 24 and then was handed down to me. So it's going to be 59 years.  
01:17PM 25 So it's going to be 59 years that he has lived there. All his



01:17PM 1 life.

01:17PM 2 Q Did the -- the officers tell you the reason for the

01:17PM 3 search?

01:17PM 4 A They didn't -- I don't remember he telling me what, you

01:18PM 5 know, what the search was. He just showed the -- the warrant

01:18PM 6 to me and I kind of -- I looked at it but I don't really

01:18PM 7 remember.

01:18PM 8 MR. MOTT: All right. All right. Thank you.

01:18PM 9 Nothing further.

01:18PM 10 THE COURT: Any questions for this witness from the

01:18PM 11 government?

01:18PM 12 MS. OLSON: Yes, Your Honor.

01:18PM 13 CROSS-EXAMINATION

01:18PM 14 BY MS. OLSON:

01:18PM 15 Q Good afternoon.

01:18PM 16 A Good afternoon.

01:18PM 17 Q Just a few questions. You are Lyle Cummings' mother?

01:18PM 18 A I'm his mother.

01:18PM 19 Q And you don't want to see him get in trouble, right?

01:18PM 20 A Pardon?

01:18PM 21 Q You don't want to see him get in trouble, right?

01:18PM 22 A No. Nobody does. No parent wants to see that.

01:18PM 23 Q And in March 2020, you weren't watching over him 24/7,

01:18PM 24 right?

01:18PM 25 A I was what?

01:18PM 1 Q You were not watching over him all the time in March 2020,  
01:18PM 2 right?  
01:18PM 3 A No. No.  
01:19PM 4 Q You didn't monitor his cellphone?  
01:19PM 5 A No.  
01:19PM 6 Q You weren't using his cellphone in March 2020?  
01:19PM 7 A No.  
01:19PM 8 Q You weren't with him in the truck the night he was  
01:19PM 9 arrested in March 2020, right?  
01:19PM 10 A No.  
01:19PM 11 Q Couple of questions for you about the search of the house  
01:19PM 12 that you talked about earlier. Was that on March 16th, 2020?  
01:19PM 13 A I cannot remember that exact date.  
01:19PM 14 Q Okay.  
01:19PM 15 A On or about that date.  
01:19PM 16 Q But you were home during the search?  
01:19PM 17 A I was home.  
01:19PM 18 Q And Lyle Cummings was living with you in that house at the  
01:19PM 19 time. Did he have his own room?  
01:20PM 20 A His own room.  
01:20PM 21 Q And the desk you referred to in the garage, was that  
01:20PM 22 Lyle's desk?  
01:20PM 23 A Yes.  
01:20PM 24 Q Are you aware that during the search law enforcement found  
01:20PM 25 clear plastic empty baggies of the same type that were found in

01:20PM 1 the truck on the day of his arrest?

01:20PM 2 A No. No.

01:20PM 3 Q But you did mention that law enforcement found about

01:20PM 4 \$11,000 in cash?

01:20PM 5 A Yes.

01:20PM 6 Q And they recovered that from Lyle's bedroom?

01:20PM 7 A Yes.

01:20PM 8 Q Are you aware that after the \$11,000 in cash was found in

01:21PM 9 his room Maui Police Department had a canine sniff the \$11,000

01:21PM 10 and that the canine alerted to the thousand dollars indicating

01:21PM 11 an odor of illegal narcotics on the cash?

01:21PM 12 A No.

01:21PM 13 MS. OLSON: No more questions.

01:21PM 14 THE COURT: Any redirect?

01:21PM 15 MR. MOTTL: No, Your Honor. Thank you.

01:21PM 16 THE COURT: You may step down, ma'am.

01:21PM 17 Your next witness.

01:21PM 18 MR. MOTTL: No further witnesses, Your Honor.

01:21PM 19 THE COURT: Defense rests?

01:21PM 20 MR. MOTTL: Yes, defense rests.

01:21PM 21 THE COURT: Any rebuttal?

01:21PM 22 MS. OLSON: No, Your Honor.

01:21PM 23 THE COURT: All right. So ladies and gentlemen of the

01:22PM 24 jury, what that means then is the presentation of the evidence

01:22PM 25 in this case has now been concluded. There are a few matters

01:22PM 1 that the Court needs to take up with counsel. Given the hour  
01:22PM 2 of the day, we are at 1:22. It seems appropriate for us to  
01:22PM 3 adjourn for the day.

01:22PM 4 As we go to break for the day, I will remind you to  
01:22PM 5 refrain from discussing the substance of this case with anyone,  
01:22PM 6 including one another until I advise otherwise; to refrain from  
01:22PM 7 accessing any media or other accounts of this case that may be  
01:22PM 8 out there; and finally do not conduct any independent  
01:22PM 9 investigation into the facts, circumstances or persons  
01:22PM 10 involved.

01:22PM 11 We will see you back here at 8:30 tomorrow morning  
01:22PM 12 when I expect to instruct you on the law that you must apply in  
01:22PM 13 this case during the course of your deliberations. That will  
01:22PM 14 then be immediately followed by the closing arguments of the  
01:22PM 15 lawyers and then you will begin your deliberations. Okay. So  
01:22PM 16 that's what we have coming up in the immediate future.

01:22PM 17 (At 1:22 p.m., the jury was excused, and the following  
01:22PM 18 proceedings were held:)

01:23PM 19 THE COURT: All right. Our 14 jurors have departed  
01:23PM 20 the courtroom. Any requests or other issues counsel wishes to  
01:23PM 21 take up with the court.

01:23PM 22 MS. OLSON: No, Your Honor.

01:23PM 23 THE COURT: Mr. Mottl.

01:23PM 24 MR. MOTTL: None from the defense, Your Honor.

01:23PM 25 THE COURT: All right. So first thing tomorrow



01:24PM 1 morning, we -- actually, this afternoon we will finalize the  
01:24PM 2 jury instructions and verdict form consistent with our  
01:24PM 3 discussions. We will file the files final sets of both  
01:24PM 4 documents on the docket later this afternoon. I will begin at  
01:24PM 5 8:30 tomorrow instructing the jury. That usually takes about  
01:24PM 6 30 minutes. And then we will immediately go into closing  
01:24PM 7 arguments. Any questions from either side?

01:24PM 8 MS. OLSON: Do I need to request closing argument  
01:24PM 9 rebuttal?

01:24PM 10 THE COURT: I'm not concerned really about it. I  
01:24PM 11 mean, this trial has been fairly quick. You know, I've  
01:24PM 12 mentioned to you both in the past that I -- I thinking  
01:24PM 13 30 minutes per side, but if, you know, we have some flexibility  
01:24PM 14 with that. I'm not going to cut anybody short if you feel like  
01:24PM 15 you need a few more minutes than that -- that's acceptable with  
01:24PM 16 me. Any other questions?

01:24PM 17 MR. MOTTL: No, Your Honor. Will there be -- are we  
01:24PM 18 going to have a session settling instructions following this or  
01:25PM 19 go on the stipulations?

01:25PM 20 THE COURT: I'm sorry. Your question is what?

01:25PM 21 MR. MOTTL: We will have a -- we'll have a settling  
01:25PM 22 conference on the jury instructions this afternoon you said.  
01:25PM 23 Is that --

01:25PM 24 THE COURT: No, that's not what I said.

01:25PM 25 MR. MOTTL: Oh, I -- I --

01:25PM 1 THE COURT: Reconciliation of jury instruction has  
01:25PM 2 already occurred. If there is some other issues that you want  
01:25PM 3 to bring to my attention with regard to those instructions that  
01:25PM 4 I'm not aware of, I'm listening.

01:25PM 5 MR. MOTTL: No. I -- I -- you referred to this  
01:25PM 6 afternoon. It will be settled everything will be filed. Okay.  
01:25PM 7 That's fine.

01:25PM 8 THE COURT: When I refer to this afternoon is we, my  
01:25PM 9 chambers, will finalize those instructions consistent with our  
01:25PM 10 discussions that have already occurred. We will also finalize  
01:25PM 11 the verdict form at that time. Both documents will then be  
01:25PM 12 presented as final documents on the court docket of this case.

01:25PM 13 You -- you're free to print them, if you wish. If you  
01:25PM 14 do not, we will have nonetheless hard copies for both sides  
01:25PM 15 tomorrow morning before we begin. Those documents will be  
01:25PM 16 available for the jurors, of course, at the start of their  
01:26PM 17 deliberations. Any questions?

01:26PM 18 MR. MOTTL: None for the defense. Thank you.

01:26PM 19 MS. OLSON: No. Thank you, Your Honor.

01:26PM 20 THE COURT: All right. We'll see you tomorrow  
01:26PM 21 morning.

01:26PM 22 (Proceedings were concluded at 1:26 p.m.)

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24

25

1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United  
3 States District Court, District of Hawaii, do hereby certify  
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,  
5 true, and correct transcript from the stenographically reported  
6 proceedings held in the above-entitled matter and that the  
7 transcript page format is in conformance with the regulations  
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, February 12, 2024.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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1                                   IN THE UNITED STATES DISTRICT COURT  
2                                   FOR THE DISTRICT OF HAWAII  
3  
4           UNITED STATES OF AMERICA,    )  
5                                   Plaintiff,    )  
6                                   vs.            )  
7           LYLE RIKIO CUMMINGS,        )  
8                                   Defendant.    )  
                                  \_\_\_\_\_)

9  
10                               TRANSCRIPT OF JURY TRIAL (DAY 6)  
11                               BEFORE THE HONORABLE DERRICK K. WATSON,  
12                               CHIEF UNITED STATES DISTRICT COURT JUDGE

13 APPEARANCES:

14 For the Plaintiff:           REBECCA PERLMUTTER, ESQ.  
15                                   CHRISTINE OLSON, ESQ.  
16                                   Office of the United States Attorney  
17                                   PJKK Federal Building  
                                  300 Ala Moana Boulevard, Suite 6100  
                                  Honolulu, Hawaii 96850

18 For the Defendant:           JOSEPH R. MOTT, III, ESQ.  
19                                   2009 Makiki Street #C  
                                  Honolulu, HI 96822

20 Official Court Reporter:       Gloria T. Bediamol, RPR RMR CRR FCRR  
21                                   United States District Court  
22                                   300 Ala Moana Boulevard  
                                  Honolulu, Hawaii 96850

23  
24  
25 Proceedings recorded by machine shorthand, transcript produced  
with computer-aided transcription (CAT).



09:13AM 1 making their closing arguments. As I just mentioned, what they  
09:13AM 2 say is not evidence and you are not bound by their  
09:13AM 3 interpretations or recollection of the evidence.

09:13AM 4 The evidence that you must consider in the course of  
09:13AM 5 your deliberations comes from the witnesses and from the  
09:13AM 6 evidence, which are in evidence -- the exhibits. I'm sorry,  
09:13AM 7 the exhibits that are in evidence. You are to rely on your own  
09:14AM 8 collective recollection of the evidence in reaching a decision  
09:14AM 9 in this case.

09:14AM 10 Ms. Olson, is the government prepared for its closing  
09:14AM 11 argument?

09:14AM 12 MS. OLSON: Yes, Your Honor.

09:14AM 13 THE COURT: You may proceed.

09:14AM 14 MS. OLSON: Good morning. It's the defendant's own  
09:14AM 15 words and actions that are at the heart of this case. His  
09:14AM 16 words and the messages he wrote, and his actions searching for  
09:14AM 17 Kiana's location on the phone, driving to meet up with her,  
09:15AM 18 flashing his headlights at her, showing up with marijuana, cash  
09:15AM 19 and a large amount of cocaine and crack packaged for sale in  
09:15AM 20 the truck. The defendant chose to say these things and the  
09:15AM 21 defendant chose to do these things, and he's the reason we are  
09:15AM 22 here today.

09:15AM 23 In my opening statement I said this case would be  
09:15AM 24 straightforward, and now that you've heard all the evidence in  
09:15AM 25 the case, you can see it is straightforward and simple. The

09:15AM 1 evidence shows not just beyond a reasonable doubt, but beyond  
09:15AM 2 any doubt, the defendant tried to persuade a 13-year-old to  
09:15AM 3 meet him for sex. Kiana, or the undercover chatter, told him  
09:15AM 4 four times very clearly she was 13 years old. The defendant  
09:15AM 5 responded very clearly, her being 13 didn't bother him. There  
09:15AM 6 was never any suggestion in any of the messages exchanged that  
09:16AM 7 this was some kind of fantasy or role playing, and the whole  
09:16AM 8 context of the conversation shows that Mr. Cummings believed  
09:16AM 9 she was a minor. He never hesitated. He never showed the  
09:16AM 10 slightest reluctance; instead, he became more and more  
09:16AM 11 aggressive.

09:16AM 12 He persisted and he escalated things after he found  
09:16AM 13 out her age. He asked her over and over and over to meet her  
09:16AM 14 in person, and there's no question he tried in many ways to  
09:16AM 15 persuade her to meet him for sex. He repeatedly offered her  
09:16AM 16 cash, offered to take her shopping, including at Victoria's  
09:16AM 17 Secret, take her to hotels, sent her photographs of large  
09:16AM 18 amounts of cash and offered her marijuana. He asked her 14  
09:16AM 19 times to send videos or pictures of herself, including while  
09:16AM 20 she was in the shower.

09:16AM 21 After she told him 4 times she was 13, and after he  
09:16AM 22 spent time trying to groom and persuade her, he then chose to  
09:17AM 23 escalate things further. He described in graphic detail how he  
09:17AM 24 wanted to have oral sex and intercourse with her. He couldn't  
09:17AM 25 have been more clear about what he wanted from Kiana. Within

09:17AM 1 about one minute of Kiana telling him her location, he looked  
09:17AM 2 it up on his phone on Apple Maps. That's the action of someone  
09:17AM 3 who is serious.

09:17AM 4 Within less than an hour of discussing a meetup  
09:17AM 5 location, he was there. He drove his truck to the spot. He  
09:17AM 6 flashed his headlights and when his truck was searched after he  
09:17AM 7 was arrested, he was caught red-handed with a significant  
09:17AM 8 amount of cocaine and crack packaged and ready to sell or  
09:17AM 9 distribute.

09:17AM 10 He then admitted to many of the key facts about the  
09:17AM 11 enticement in his post-arrest interview.

09:17AM 12 So the facts are simple. Let's talk about the law and  
09:17AM 13 what the government needs to prove for each of the two counts.

09:18AM 14 Count 1, I'm going to, for shorthand, refer to this as  
09:18AM 15 the enticement count. Count 1 is attempting to persuade,  
09:18AM 16 coerce, induce or entice a minor into sexual activity.

09:18AM 17 Count 2, for shorthand I'll call it the drug count.  
09:18AM 18 Possession with intent to distribute cocaine and crack.

09:18AM 19 The government must prove these crimes beyond a  
09:18AM 20 reasonable doubt. That doesn't mean beyond all possible doubt,  
09:18AM 21 beyond a shadow of a doubt. A reasonable doubt is based on  
09:18AM 22 reason and common sense. The government has met its burden on  
09:18AM 23 both of these two counts.

09:18AM 24 Let's talk about the counts. We will start with Count  
09:18AM 25 1. There are four subparts to Count 1 that you'll need to

09:18AM 1 consider and I'm going to talk about each of these four parts  
09:18AM 2 in some detail.

09:19AM 3 This is a breakdown of part one. Part one is the  
09:19AM 4 longest of the four parts and you'll need to consider all of  
09:19AM 5 these components of Count 1, part one. We'll talk about the  
09:19AM 6 defendant. We'll talk about what knowingly means; did he  
09:19AM 7 attempt to persuade, induce, entice or coerce an individual  
09:19AM 8 under the age of 18 to engage in unlawful sexual activity, for  
09:19AM 9 which any person could be charged with an offense under the  
09:19AM 10 Hawaii Revised Statutes. So we'll talk about each of these  
09:19AM 11 step by step.

09:19AM 12 First let's talk about, very briefly, the defendant.  
09:19AM 13 I'm going to go over this very quickly. Identifying the  
09:19AM 14 defendant is not an issue in this case. The defendant got on  
09:19AM 15 the stand yesterday. He told you he was the one who was  
09:19AM 16 exchanging the messages. There's no question it was him behind  
09:20AM 17 the messages. There's no question that Lyle Cummings is the  
09:20AM 18 one who was arrested on March 15th, 2020, and that it was his  
09:20AM 19 truck. As you can see, I included a photograph here. This is  
09:20AM 20 the DuckFat hat that was found, a photograph, in the back of  
09:20AM 21 his Toyota Tacoma when it was searched pursuant to the search  
09:20AM 22 warrant on March 16th, 2020, and as you'll recall, DuckFat was  
09:20AM 23 the name that he chose to put on his Skout profile, Duckfat34.  
09:20AM 24 As the defendant has admitted to this point, we will move on.

09:20AM 25 Let's talk about attempt very briefly. This is an



09:20AM 1 attempt crime for obvious reasons. There was no actual minor.

09:21AM 2 So attempted enticement. Keep in mind, however, as you were

09:21AM 3 just instructed, an actual minor victim is not required for an

09:21AM 4 attempt conviction under the enticement count, so it's okay

09:21AM 5 that Kiana was not real for Count 1.

09:21AM 6 A couple other things to keep in mind generally for

09:21AM 7 Count 1. As the judge just instructed you, the use of the

09:21AM 8 undercover operation was okay. This is the relevant jury

09:21AM 9 instructions. "Law enforcement officials may engage in stealth

09:21AM 10 and deception, such as the use of informants and undercover

09:21AM 11 agents in order to investigate criminal activities. Undercover

09:21AM 12 agents and informants may also use false names and identities."

09:21AM 13 So it doesn't matter that Kiana was fake. Doesn't

09:21AM 14 matter if she had a fake name. It was an undercover operation.

09:21AM 15 That's fine.

09:21AM 16 You also heard Detective Surina talk about that on the

09:22AM 17 stand. You heard them talk about Operation Keiki Shield and

09:22AM 18 you heard Officer Surina say this was an acceptable and

09:22AM 19 standard police practice, and the purpose of these undercover

09:22AM 20 operations, according to Detective Surina, is to prevent people

09:22AM 21 from exploiting minors. That's why officers engage in these

09:22AM 22 undercover operations.

09:22AM 23 The next part to mention is just briefly talk about

09:22AM 24 the word "knowingly." That's in part one of Count 1.

09:22AM 25 Defendant -- knowingly means he did it voluntarily and

09:22AM 1 intentionally and not by mistake or accident. There was  
09:22AM 2 nothing that the defendant did here that was by mistake or  
09:22AM 3 accident except getting caught.

09:22AM 4 So note here this is Count 1, still on part one. "The  
09:23AM 5 defendant knowingly attempted to persuade, induce, entice, or  
09:23AM 6 coerce an individual." I'll just point out the word "or" there  
09:23AM 7 so you don't have to find -- if you like the word "persuasion"  
09:23AM 8 better, you feel that better fits the situation, that's enough,  
09:23AM 9 or enticement, that's enough. You don't have to find all of  
09:23AM 10 these adjectives, although they are all clearly shown here.

09:23AM 11 Another thing to keep in mind is that although the  
09:23AM 12 defendant did promise her money and offer her money,  
09:23AM 13 persuasion, inducement, enticement and coercion just have their  
09:23AM 14 common sense, common language meaning. It doesn't have to be  
09:23AM 15 money. It can be money, but it can be other things. It can be  
09:23AM 16 shopping, it can be persuasive language and other things. So  
09:23AM 17 just apply your common sense meaning of the term.

09:24AM 18 So what did the defendant do to persuade, induce,  
09:24AM 19 entice or coerce Kiana? Let's talk about what he did.

09:24AM 20 So first he contacted her three days in a row. He's  
09:24AM 21 the one who initiated the contact on each of the three days.  
09:24AM 22 He asked her repeatedly to meet up in person. He offered to  
09:24AM 23 give her cash, sending her photographs of stacks of cash.  
09:24AM 24 Offered to take her shopping, hotel rooms, spoil her and he  
09:24AM 25 offered to give her marijuana.

09:24AM 1 You may want to, in your deliberations, go through  
09:24AM 2 Exhibits 3 and 4, which are the Skout messages and the text  
09:24AM 3 messages, and perhaps count how many times did he ask her to  
09:24AM 4 meet in person; how many times did he offer to give her a  
09:24AM 5 benefit for meeting him; how many times did he offer to take  
09:24AM 6 her shopping.

09:25AM 7 Here's an example of him offering her cash. This is  
09:25AM 8 from Exhibit 4. This is one of the two photographs of the  
09:25AM 9 actual cash that he sent to Kiana by text message. This was  
09:25AM 10 after she said she was 13 years old. In this context,  
09:25AM 11 defendant also said "I'll be your sugar daddy. Let's spoil  
09:25AM 12 you."

09:25AM 13 Here's another one of the photographs of the cash that  
09:25AM 14 the defendant texted to Kiana, and this one was after she said  
09:25AM 15 two times that she was 13 years old. As you can see, I pulled  
09:25AM 16 a little snippet of the chats that was close to this from  
09:25AM 17 Exhibit 4. Kiana says, "How can I get one of those stacks?"

09:26AM 18 Cummings says, "When you ride with me." So he's  
09:26AM 19 making it clear if she meets up with him, he's going to give  
09:26AM 20 her some money.

09:26AM 21 Also note in his post-arrest interview he admitted to  
09:26AM 22 law enforcement he told Kiana he would have money when he met  
09:26AM 23 up with her, and he did have money when he met up with her.

09:26AM 24 Here's another example of where Cummings offers to  
09:26AM 25 spoil her. This was after she said she was 13, 4 times.

09:26AM 1 Cummings said, "Walk around the Shops of Wailea holding your  
09:26AM 2 hand, taking you to the beach and sleeping under the stars  
09:26AM 3 waking up to you. Renting hotel rooms during the weekend.  
09:26AM 4 Spoiling you late night watching movies and whatever you like  
09:26AM 5 to do." Here he is building up. He's working on the  
09:26AM 6 persuasion.

09:26AM 7 Here's where he offers her marijuana. This was after  
09:26AM 8 she said she was 13, 2 times. Cummings said, "You burn weed?"  
09:27AM 9 "Kiana. Yeah, but puts me to," sleepy face emoji."  
09:27AM 10 "Cummings. I'll have some if you like." Puff emoji.  
09:27AM 11 He's offering her marijuana.

09:27AM 12 So this, I'm going back to the full language of Count  
09:27AM 13 1, which is enticement. We're still talking about part one.  
09:27AM 14 So we talked about the defendant, we talked about knowingly,  
09:27AM 15 attempted, persuade, induce, entice or coerce, and now we'll  
09:27AM 16 move on to the next part; was it an individual under the age of  
09:27AM 17 18.

09:27AM 18 Now, we know Kiana said she was 13. That's enough for  
09:27AM 19 that part of the statute. She said it 4 times in no uncertain  
09:27AM 20 terms. Although she is fictional, again, that doesn't matter  
09:28AM 21 for this purpose of this statute.

09:28AM 22 Let's look at the next part; what was he trying to  
09:28AM 23 persuade her to do? He was trying to persuade her to engage in  
09:28AM 24 unlawful sexual activity, unlawful sexual activity that would  
09:28AM 25 be illegal under Hawaii state law. So we've got to look at



09:28AM 1 Hawaii state law as part of this. Here's the relevant Hawaii  
09:28AM 2 state law. "A person commits the offense of sexual assault in  
09:28AM 3 the first degree if the person knowingly engages in sexual  
09:28AM 4 penetration with another person who is less than 14 years old.  
09:28AM 5 Sexual penetration includes oral sex or intercourse."

09:28AM 6 So again, here we have another -- a person who is less  
09:28AM 7 than 14 years old. Kiana was 13. Again, it doesn't matter  
09:28AM 8 that she was fictional.

09:28AM 9 "Sexual penetration includes oral sex or intercourse."  
09:28AM 10 It's very clear from the chats from the text messages that is  
09:29AM 11 exactly what Cummings was talking about and what his intention  
09:29AM 12 was.

09:29AM 13 Now remember, there is no requirement here that any  
09:29AM 14 actual sexual act occurred. It doesn't matter that there was  
09:29AM 15 no actual sexual penetration. If you go back to the language,  
09:29AM 16 this just means that the defendant was trying to persuade her  
09:29AM 17 to do these things. So there's no actual sex needed. This is  
09:29AM 18 again, attempt.

09:29AM 19 Now, we'll go into a few examples of him trying to  
09:29AM 20 persuade her to meet him for sex. Now you heard the defendant  
09:29AM 21 read quite a few of these. I won't read them again. Here's  
09:29AM 22 one example where Mr. Cummings very clearly describes he wants  
09:30AM 23 to have oral sex with her. This was after she said 4 times  
09:30AM 24 that she was 13 years old. Same thing here. This was also  
09:30AM 25 after Kiana said 4 times she was 13 years old, and you heard

09:30AM 1 the defendant read these words yesterday. Again, this clearly  
09:30AM 2 counts as sexual penetration under the Hawaii statute.

09:30AM 3 Now the defendant said yesterday on the stand he met  
09:30AM 4 up with Kiana because he was just curious. He was just curious  
09:30AM 5 to meet her. This is just not credible in light of the  
09:30AM 6 messages we just discussed. It's very clear he wasn't just  
09:30AM 7 curious, he wanted to meet her for sex. It's also clear that  
09:31AM 8 this wasn't just talk. Cummings himself said, "Is tonight  
09:31AM 9 going to happen for us or just talk?" He doesn't want to just  
09:31AM 10 talk. He's making clear what he's trying to persuade Kiana to  
09:31AM 11 do, which is meet him for sex.

09:31AM 12 Now, one thing to keep in mind, a minor cannot consent  
09:31AM 13 to sex, so again, it doesn't matter that we're talking about a  
09:31AM 14 fictional minor here. So whatever Kiana or the undercover  
09:31AM 15 chatter may have said, if you interpret that as being  
09:31AM 16 encouraging, that doesn't matter. What matters here are the  
09:31AM 17 defendant's words and the defendant's actions.

09:31AM 18 Okay. We're done with part one of Count 1, which is  
09:31AM 19 the enticement charge. Now we're on part two. Remember I said  
09:31AM 20 there would be four parts. We're on part two, interstate  
09:31AM 21 commerce. This is super quick and easy because the parties  
09:32AM 22 agreed by stipulation to this. You can just look at  
09:32AM 23 Exhibit 18. There's just no issue and you know that the  
09:32AM 24 defendant used the internet and a cellular telephone when he  
09:32AM 25 committed this crime.

09:32AM 1 Count 1, which is enticement, part three, the  
09:32AM 2 defendant believed Kiana was under 18. This was very clear  
09:32AM 3 from all the messages and from the defendant's post-arrest  
09:32AM 4 interview. Again, as I said many times, Kiana told him very  
09:32AM 5 clearly, four times, she was 13 years old. Let's look briefly  
09:32AM 6 at each time she told him that and what his response was.  
09:32AM 7 This was the first time Kiana says she's 13 years old.  
09:32AM 8 Here she says at the top, "Kiana. Yeah, but up front I'm waaay  
09:33AM 9 younger. Just put a random number in my profile."  
09:33AM 10 So defendant said on the stand yesterday he thought  
09:33AM 11 she was 35 because her profile said 35. Right here she's  
09:33AM 12 telling him she is not 35. The profile age is not correct.  
09:33AM 13 She is 13 years old. She is about to turn 14. The defendant  
09:33AM 14 responds to this, so you know he read it, he responded. He  
09:33AM 15 says, "Age no matter." He doesn't care what her age is.  
09:33AM 16 And then when she very clearly says it, turning 14  
09:33AM 17 next month, he says, "I'll grant you this once tonight. I'll  
09:33AM 18 come pick you up." That's his very next message after she  
09:33AM 19 first says she's 13. He doesn't say wait, I thought you were  
09:33AM 20 35, I thought you were an adult. He says, that's fine. I  
09:34AM 21 don't care. I'll come pick you up.  
09:34AM 22 On the stand yesterday the defendant said this  
09:34AM 23 response, "I'll come pick you up" right here was an accident he  
09:34AM 24 claims he was texting with two people at once, one of which was  
09:34AM 25 Kiana, one of which was his girlfriend, and he meant to say he

09:34AM 1 was going to pick up his girlfriend. That is not credible.

09:34AM 2 You can apply your common sense here. Look at the

09:34AM 3 context of the whole conversation. Again, look at his own

09:34AM 4 words. The defendant asking to pick her up here is completely

09:34AM 5 consistent with the entire rest of the conversation.

09:34AM 6 And one of the very first messages to her on Skout on

09:34AM 7 day one he says, "Like me come rescue you, come pick you up?"

09:34AM 8 Later he says, "What time I coming to pick you up?" This is

09:35AM 9 day two. Later in the evening on day two, "What time can I

09:35AM 10 come pick you up?" Then, "Let me come pick you up to take you

09:35AM 11 away from the drama. Later. Come pick you up, go by the

09:35AM 12 beach."

09:35AM 13 He says the same thing many times; pick you up. He

09:35AM 14 asks to pick -- he says he wants to pick her up over and over

09:35AM 15 and over again. You can count the number of times he said it.

09:35AM 16 So him claiming that saying he's going to pick up his

09:35AM 17 girlfriend here and it was an accidental text is just not

09:35AM 18 credible.

09:35AM 19 Then let's look at his actions. Those are his words.

09:35AM 20 Let's look at his actions. He actually does go to pick her up.

09:35AM 21 He tries to. He drives the truck to pick her up, so it's not

09:35AM 22 just words. His testimony on the stand yesterday about this

09:35AM 23 point just doesn't add up.

09:35AM 24 Second time Kiana says she's 13 years old, she says,

09:36AM 25 "What kind of fun you going to do with a 13-year-old girl. I



09:36AM 1 can't go into bars." You see here it's not just that she's  
09:36AM 2 saying the number 13. There's other context in the  
09:36AM 3 conversation, she can't go into bars.

09:36AM 4 And how does he respond? "We can go to the beach and  
09:36AM 5 have our own fun." He starts talking about her body. About 10  
09:36AM 6 minutes later he offers her the weed.

09:36AM 7 Now, let's look at the third and fourth time Kiana  
09:36AM 8 says she is 13. She asks if he is okay with it. He says okay.  
09:36AM 9 Again, What are you going to do with me. Being 13, I can't go  
09:36AM 10 into bars." So this is the third and fourth time that she says  
09:36AM 11 she's 13.

09:36AM 12 Less than 30 minutes later after this, he starts  
09:36AM 13 graphically describing how he wants to have oral sex and  
09:37AM 14 intercourse with her.

09:37AM 15 They also talk about how she's about to start high  
09:37AM 16 school. So again, it's not just the numerical numbers she  
09:37AM 17 says, it's the whole context of the conversation.

09:37AM 18 The defendant says they could keep their relationship  
09:37AM 19 a secret. Why would he say that if she was an adult? Why  
09:37AM 20 would it need to be secret?

09:37AM 21 He admits in his post-arrest interview that he  
09:37AM 22 believed she was 14. Then he sort of stumbles. Actually,  
09:37AM 23 first he says 18. Why does he say 18? He's in his post-arrest  
09:37AM 24 interview. He doesn't say oh, she's 35. If he really thought  
09:37AM 25 he was talking to a 35-year-old, he gets arrested, he's in the

09:37AM 1 interview and they ask him about the age, he would say, I would  
09:37AM 2 think he would say, excuse me, she told me she was 35. He  
09:38AM 3 doesn't say that in the interview at all, not once.

09:38AM 4 He says, she said she was 18. Why does he choose that  
09:38AM 5 number? Because he knows that's the age of consent. He won't  
09:38AM 6 get in trouble if she's 18.

09:38AM 7 When he's pressed a little bit more in the interview  
09:38AM 8 by law enforcement, then he admits, he drops it down. He says  
09:38AM 9 oh, 14 or maybe about to turn 14. He thinks so. He admits he  
09:38AM 10 knows she's very young and she's a minor.

09:38AM 11 Yesterday the defendant testified he thought that the  
09:38AM 12 whole age thing, the whole 13 thing, they were just role  
09:38AM 13 playing. The defendant specifically told -- said in the  
09:38AM 14 messages, We are not playing games. He wanted her to be real.

09:39AM 15 Count 1, still on enticement, part four. Government  
09:39AM 16 needs to show the defendant took a substantial step towards  
09:39AM 17 committing the crime that strongly corroborated the defendant's  
09:39AM 18 intent to commit the crime. Now keep in mind, jurors do not  
09:39AM 19 have to be unanimous on agreeing what the substantial step is.  
09:39AM 20 You just need to all agree there was a substantial step,  
09:39AM 21 defendant took a substantial step.

09:39AM 22 So what are the possible substantial steps? There are  
09:39AM 23 many. I'm going to go over this briefly because it's very,  
09:39AM 24 very clear and you can see in highlighting, he drove to meet  
09:39AM 25 her. He physically looked up her location on his phone as soon

09:39AM 1 as he found out about where she was, and then he got in his  
09:39AM 2 truck and he drove to meet her. He brought marijuana and cash,  
09:39AM 3 just as he said. He flashed his headlights when he sees Kiana,  
09:39AM 4 the undercover officer playing Kiana. He texts her then, she  
09:40AM 5 should cross the street. In fact the undercover officer is  
09:40AM 6 standing across the street.

09:40AM 7 The text messages themselves and the persuasive  
09:40AM 8 techniques he used are also substantial steps to commit the  
09:40AM 9 crime, and again, the crime is the attempted persuasion to meet  
09:40AM 10 him for sex.

09:40AM 11 Again, you don't have to find all of these. Just  
09:40AM 12 driving to the meet location is enough. That's your  
09:40AM 13 substantial step.

09:40AM 14 Here's an image from Exhibit 11. He brought marijuana  
09:40AM 15 with him. In fact he had these five marijuana cigarettes  
09:40AM 16 sitting outside the center console, right between the driver  
09:40AM 17 side and the passenger seat with a butane lighter or two there,  
09:40AM 18 ready to give Kiana some marijuana as soon as she got into the  
09:40AM 19 truck. He brought cash, just as he said he would. Now let's  
09:41AM 20 talk about entrapment.

09:41AM 21 The judge read you an instruction on entrapment, so  
09:41AM 22 we'll go over this briefly. The government has to prove to you  
09:41AM 23 the defendant was predisposed to commit the crime before being  
09:41AM 24 contacted by government agents, or, note that's an "or," not an  
09:41AM 25 "and," the defendant was not induced by the government agents

09:41AM 1 to commit the crime.

09:41AM 2 So here we have both. We'll talk about each one, but  
09:41AM 3 we have both here. Now keep in mind that for number one,  
09:41AM 4 predisposition, you can consider the defendant's words and  
09:41AM 5 actions in this case. It doesn't have to be something he did  
09:41AM 6 long ago, it can be actually what he said in the text, what he  
09:41AM 7 did here. That can show you he was predisposed to commit this  
09:41AM 8 crime.

09:41AM 9 So let's talk about number one, predisposition. When  
09:42AM 10 a person, independent of and before government contact, is  
09:42AM 11 predisposed to commit the crime, it is not entrapment if  
09:42AM 12 government agents merely provide an opportunity to commit the  
09:42AM 13 crime. That's what happened here. The law enforcement agents  
09:42AM 14 provided an opportunity for Mr. Cummings to commit the crime  
09:42AM 15 with the undercover operation with Kiana's profile. That does  
09:42AM 16 not mean that we don't have predisposition.

09:42AM 17 So what are the facts here that shows -- what factors  
09:42AM 18 should you consider to decide whether or not there's  
09:42AM 19 predisposition. These are the factors that the judge just read  
09:42AM 20 you in the jury instructions. Now note, these are just for  
09:42AM 21 your consideration. You don't have to go mechanically through  
09:42AM 22 each one and make a finding on each one of these. You could  
09:43AM 23 consider all of them. You could -- you don't have -- what I  
09:43AM 24 would suggest to you is that number one is the most significant  
09:43AM 25 in this case. You should consider whether the defendant



09:43AM 1 demonstrated reluctance to commit the offense.

09:43AM 2 And here on these facts, the defendant never showed  
09:43AM 3 the slightest hesitation or reluctance to try to persuade her  
09:43AM 4 to meet him for sex. If reluctance is over here, Mr. Cummings  
09:43AM 5 is way over here. Every time she says she's 13, it doesn't  
09:43AM 6 bother him and in fact, he ratchets up his behavior and his  
09:43AM 7 words and he escalates it. He becomes more aggressive. He  
09:43AM 8 starts talking about graphic sex. He shows no reluctance at  
09:43AM 9 any point in the conversation with Kiana. He's very aggressive  
09:43AM 10 and persistent.

09:43AM 11 The defendant had every opportunity to get out of the  
09:44AM 12 situation. He had every opportunity to stop what was happening  
09:44AM 13 and walk away. Every time she said she was 13, he could have  
09:44AM 14 ended the conversation. And why didn't he? Because he was  
09:44AM 15 already predisposed to commit this crime. If he hadn't been  
09:44AM 16 predisposed, he would have ended conversation when she said she  
09:44AM 17 was 13.

09:44AM 18 Let's talk about step two, which is inducement. This  
09:44AM 19 is related to predisposition. You can apply your common sense  
09:44AM 20 here and decide was there government inducement. The facts  
09:44AM 21 that are important here are keep in mind the defendant  
09:44AM 22 initiated contact with the undercover Skout profile. The  
09:44AM 23 defendant started the conversation himself for three days in a  
09:44AM 24 row. The defendant is the one who was pushing to meet Kiana  
09:44AM 25 over and over, and over again, despite a lot of the hesitation

09:45AM 1 and long delays by Kiana.

09:45AM 2 Kiana didn't agree to meet with him until day three of

09:45AM 3 him begging to meet her. The defendant is the one who offered

09:45AM 4 cash, shopping, hotel rooms and marijuana. The defendant is

09:45AM 5 the one who started the sexual conversation, and the defendant

09:45AM 6 didn't hesitate to do a GPS search for her location and

09:45AM 7 immediately drive to the location.

09:45AM 8 Law enforcement did not push him into this. Law

09:45AM 9 enforcement created the opportunity and Mr. Cummings was the

09:45AM 10 one who did the pushing.

09:45AM 11 That is all I have to say for now about Count 1, the

09:45AM 12 enticement.

09:45AM 13 Let's talk about Count 2, the drug count.

09:45AM 14 Here the government needs to show that the defendant

09:45AM 15 knowingly possessed any controlled substance; that is, cocaine

09:45AM 16 or cocaine base. And as you heard during the trial, cocaine

09:45AM 17 base means crack.

09:46AM 18 So although you need to determine the defendant

09:46AM 19 possessed a controlled substance, just keep in mind you don't

09:46AM 20 have to be unanimous about whether the substance was cocaine or

09:46AM 21 cocaine base, or both. As the judge told you, the government

09:46AM 22 doesn't have to prove a specific amount or quantity, just that

09:46AM 23 there was some cocaine and some crack.

09:46AM 24 A person has possession -- let's talk about possession

09:46AM 25 first; did he possess a controlled substance, did he possess

09:46AM 1 cocaine or crack. A person has possession of something if the  
09:46AM 2 person knows of its presence and has physical control of it, or  
09:46AM 3 knows of its presence and has the power and intention to  
09:46AM 4 control it.

09:46AM 5 So how do we know the defendant possessed the drugs?  
09:46AM 6 Well, you heard Brandi Kaoni, the expert. She explained to you  
09:46AM 7 the drugs were tested, and they tested positive for cocaine and  
09:47AM 8 crack. There's no doubt it was cocaine and crack.

09:47AM 9 You also heard a lot about chain of custody and how  
09:47AM 10 law enforcement was extremely professional and careful about  
09:47AM 11 how the drugs were transported and kept at every stage.

09:47AM 12 So how do we know the defendant possessed it? You  
09:47AM 13 should apply your common sense here. The officer found the  
09:47AM 14 cocaine and crack in the center console of Mr. Cummings's  
09:47AM 15 truck. The drugs were in a black -- most of the drugs or both  
09:47AM 16 of the drugs were found in a black bag along with his ID and  
09:47AM 17 cash. The ID and cash were also in that same black bag; his  
09:47AM 18 identification, multiple pieces of his identification in the  
09:47AM 19 bag with the cocaine and crack. He's driving the truck with  
09:47AM 20 the cocaine and crack right next to him in the center console.  
09:47AM 21 The truck is registered to him.

09:48AM 22 So as you saw in the trial, here's the black bag in  
09:48AM 23 the center console. This is from Exhibit 11. Here are some  
09:48AM 24 photographs from Exhibit 11 of his expired Hawaii driver's  
09:48AM 25 license, HMSA card with his name on it, and you can see from

09:48AM 1 these photographs, these were taken out of the black bag that  
09:48AM 2 contained much of the crack and cocaine.

09:48AM 3 Also in the black bag you have this metallic tin. In  
09:48AM 4 the tin you have four baggies of powder cocaine. This was also  
09:48AM 5 in the black bag.

09:48AM 6 Then also in the black bag you have six more baggies  
09:48AM 7 of powder cocaine, four baggies of crack rocks, and you can see  
09:48AM 8 the bags are in the photograph and you can see a little -- in  
09:49AM 9 the bottom left-hand corner, a little bit of that, I would call  
09:49AM 10 it magenta, pinkish, purplish plastic container. That's where  
09:49AM 11 all of the drugs photographed here were found. So these four  
09:49AM 12 baggies of crack rocks and six baggies of powder cocaine were  
09:49AM 13 found in this magenta plastic container, and that container was  
09:49AM 14 in the black bag.

09:49AM 15 So we know Lyle Rikio Cummings possessed the cocaine  
09:49AM 16 and crack. That's the easy part.

09:49AM 17 Distribution, part two. How do we know he intended to  
09:49AM 18 distribute it. Government has to also prove the defendant  
09:49AM 19 possessed it with the intent to distribute to another person.  
09:49AM 20 Notice the word "intent." We don't have to prove that he did  
09:49AM 21 distribute it, just that he intended to distribute it. Also  
09:49AM 22 note, distribute just means to give to somebody else, so that  
09:50AM 23 could be for sale, could be just giving it to someone for some  
09:50AM 24 other reason. It doesn't have to be for money, but it could  
09:50AM 25 be.



09:50AM 1 You heard from a highly qualified and experienced drug  
09:50AM 2 expert, Special Agent Ryan Faulkner, and he explained to you in  
09:50AM 3 detail why his expert opinion is that Cummings had the coke and  
09:50AM 4 crack, and he intended it for sale or distribution and not for  
09:50AM 5 his own personal use.

09:50AM 6 So let's talk more about Special Agent Faulkner's  
09:50AM 7 testimony. What did you hear? Let's talk briefly about what  
09:50AM 8 Special Agent Faulkner said about the total amounts of cocaine  
09:50AM 9 and crack. First of all, there are 18 plastic baggies total  
09:50AM 10 that were found in the truck; 14 baggies of cocaine powder, and  
09:50AM 11 4 baggies of crack. The total powder cocaine weighed about 3  
09:51AM 12 ounces or 83.686 grams.

09:51AM 13 You heard from Special Agent Faulkner, 3 ounces, or  
09:51AM 14 that many grams, that's 83 sessions, approximately, of usage.  
09:51AM 15 That means 83 sessions, one session would be about 1 gram per  
09:51AM 16 session. That means someone who is sitting down to use powder  
09:51AM 17 cocaine, an average user, is likely to use about 1 gram per  
09:51AM 18 sitting. 83. You can listen to Special Agent Ryan Faulkner's  
09:51AM 19 opinion that 83 sessions is not consistent with personal use,  
09:51AM 20 but you can also apply your common sense. Lyle Cummings was  
09:51AM 21 not sitting there doing these cocaine bags for 83 times in a  
09:51AM 22 row.

09:51AM 23 Next, Special Agent Faulkner talked about the  
09:51AM 24 packaging and organization of the cocaine and crack, and why  
09:52AM 25 that shows that this was for distribution or sale.

09:52AM 1 Let's look again at this photograph. This is the same  
09:52AM 2 photograph I showed you before of everything that was found in  
09:52AM 3 that magenta plastic container in the black bag in the console.  
09:52AM 4 These baggies all have about one gram, the baggies of powder.  
09:52AM 5 All have about one gram of powder cocaine. Each baggy is about  
09:52AM 6 approximately one session or an average user would use it in  
09:52AM 7 one sitting, each of these little bags.

09:52AM 8 Remember that Special Agent Faulkner explained using  
09:52AM 9 these clear plastic baggies is consistent with selling the  
09:53AM 10 drugs, so for obvious reasons the consumer can see the drugs  
09:53AM 11 inside. You can see these little baggies would be easy to  
09:53AM 12 distribute to customers and notice that these are all full  
09:53AM 13 baggies. Each of these baggies weighed approximately one gram.  
09:53AM 14 If Mr. Cummings were sitting there using these for his personal  
09:53AM 15 use, you would expect to see some that were half empty,  
09:53AM 16 partially empty. They are full, packaged, ready to go for  
09:53AM 17 sale.

09:53AM 18 Next we have four baggies of cocaine powder that were  
09:53AM 19 found in the tin, which were also in the black bag. These  
09:53AM 20 baggies weigh a little bit more. They're a little bit bigger  
09:53AM 21 than the six baggies that were in the magenta container. They  
09:53AM 22 weigh about 1.74 grams, which Special Agent Faulkner described  
09:53AM 23 as a half of an 8 ball, and 3.4 grams, which is an 8 ball. 8  
09:54AM 24 ball is just a term for the measurement of this particular  
09:54AM 25 weight. So these baggies are for more than just one session or

09:54AM 1 for one sitting, so these are a little bit bigger.

09:54AM 2 So notice he has the different sizes and different  
09:54AM 3 amounts organized and separated in different locations. The  
09:54AM 4 smallest amounts are in the magenta plastic container, the  
09:54AM 5 medium-sized amounts are separated into this tin. That's  
09:54AM 6 intentional. As Special Agent Faulkner explained, that's  
09:54AM 7 consistent with selling the drugs.

09:54AM 8 Next, officers found four more baggies of powder  
09:54AM 9 cocaine in an iPhone box. The iPhone box was not in the black  
09:54AM 10 bag. It was under the black bag in the center console of the  
09:54AM 11 truck. These baggies contain the most amount of cocaine, the  
09:54AM 12 biggest quantity, and they weigh the most; 27 grams or about 1  
09:54AM 13 ounce, and 14 grams, a half ounce.

09:55AM 14 Special Agent Faulkner told you these bigger amounts  
09:55AM 15 are consistent with subdistributors; in other words, selling  
09:55AM 16 the bigger bags to someone else and then that person sells them  
09:55AM 17 further. Recreational users normally buy smaller amounts like  
09:55AM 18 the one gram.

09:55AM 19 So you can see that the defendant had the baggies of  
09:55AM 20 cocaine and there are this -- a range of different amounts.  
09:55AM 21 That's because buyers want to buy in different amounts. They  
09:55AM 22 want to buy different quantities. He had a range available for  
09:55AM 23 sale. Special Agent Faulkner explained that's consistent with  
09:55AM 24 selling drugs. One customer might want to buy a little bit,  
09:55AM 25 one customer might want to buy a little bit more.

09:55AM 1 And Special Agent Faulkner also told you that these  
09:55AM 2 exact weights, or approximate weights that we just discussed  
09:55AM 3 are typical weights that drug dealers sell. These quantities  
09:55AM 4 are common in the drug world.

09:56AM 5 Also note that as we talked about, the different  
09:56AM 6 amounts were stored in separate containers. You have the  
09:56AM 7 magenta container, the tin and the iPhone box. They are  
09:56AM 8 organized so that he knows quickly what size to grab for which  
09:56AM 9 customer. That allows him to do quick transactions. He kept  
09:56AM 10 the small and medium-sized baggies in the black bag. The black  
09:56AM 11 bag is mobile. That way he can jump out of the truck if he  
09:56AM 12 needs to and sell those.

09:56AM 13 The truck is also mobile. Special Agent Faulkner  
09:56AM 14 explained the truck is an ideal place to do these -- conduct  
09:56AM 15 these kind of quick transactions. It makes sense that the  
09:56AM 16 smaller baggies would be in the mobile bag for these quick  
09:56AM 17 transactions.

09:56AM 18 The bag also has separate compartments so he could  
09:56AM 19 organize the different amounts. There was a little side pocket  
09:56AM 20 for all the cash so he can jump out of the car, make change,  
09:57AM 21 get his money from a sale, put it in the bag.

09:57AM 22 Now, why would he leave the bigger amounts in the  
09:57AM 23 iPhone box? Why are they not in the black bag? Special Agent  
09:57AM 24 Faulkner explained that's also consistent with drug sales. You  
09:57AM 25 don't want to be walking around with all of your drugs at the



09:57AM 1 same time.

09:57AM 2 Special Agent Faulkner also told you that the center  
09:57AM 3 console is a perfect place for a drug dealer to keep their  
09:57AM 4 drugs. It's common for drug dealers to want to have their  
09:57AM 5 drugs for sale in close reach. So he's sitting in the driver's  
09:57AM 6 seat where he can quickly reach the drugs, but they're also  
09:58AM 7 somewhat concealed so if he's stopped by a police officer,  
09:58AM 8 somebody walks up, it's concealed, but he can also quickly and  
09:58AM 9 easily reach in and access his stash.

09:58AM 10 Let's talk about the total value of the cocaine and  
09:58AM 11 crack. Special Agent Faulkner told you the total value of the  
09:58AM 12 cocaine was approximately \$6,000 wholesale, and maybe around  
09:58AM 13 \$8,500 retail, \$400 for the crack rock. Use your common sense.  
09:58AM 14 That's an awfully large amount, a very high value to be driving  
09:58AM 15 around with and consuming for your personal use.

09:58AM 16 Couple of other reasons why it's clear these drugs  
09:58AM 17 were not for Mr. Cummings's personal use. When law enforcement  
09:59AM 18 conducted -- executed the search warrant on March 16, 2020,  
09:59AM 19 they did not find a crack pipe. And you can see that in  
09:59AM 20 Exhibit 9 you have the, it's called the return, which is  
09:59AM 21 basically just a list of everything significant found in the  
09:59AM 22 truck that officers seized. There's no crack pipe. And as you  
09:59AM 23 heard Special Agent Faulkner say, you need a crack pipe to  
09:59AM 24 smoke the crack, so Mr. Cummings was clearly not about to smoke  
09:59AM 25 those crack rocks.

09:59AM 1 You heard Mr. Cummings's wife testify yesterday. She  
09:59AM 2 hasn't seen him with cocaine. That suggests he's not a user,  
09:59AM 3 not for his personal use.

09:59AM 4 So you can look at the expert opinion, but you should  
09:59AM 5 also look at all of these factors combined, the totality of the  
09:59AM 6 circumstances, put all the pieces together, apply your common  
09:59AM 7 sense and common knowledge, and you'll see this was for sale  
10:00AM 8 and distribution and not for Mr. Cummings's personal use.

10:00AM 9 THE COURT: Counsel, you're past the 45-minute mark.

10:00AM 10 MS. OLSON: I'll wrap it up.

10:00AM 11 This case again is about the defendant's own words and  
10:00AM 12 actions. He had every opportunity to walk away. Why didn't he  
10:00AM 13 walk away? He told you why with his own words and actions; he  
10:00AM 14 wanted to have sex with a 13-year-old. That's why he tried so  
10:00AM 15 hard to persuade her. He didn't hesitate, he was persistent  
10:00AM 16 and he escalated his persuasion. He is in this predicament  
10:00AM 17 today due to his own words and actions.

10:00AM 18 He has now received a full and fair trial and the only  
10:00AM 19 just result is to hold him accountable. The application of the  
10:00AM 20 law to the evidence proves beyond a reasonable doubt Lyle  
10:00AM 21 Cummings is guilty as charged in both counts.

10:01AM 22 Thank you.

10:01AM 23 THE COURT: Closing argument, Mr. Mottl?

10:01AM 24 MR. MOTTL: Yes. Thank you, Your Honor.

10:01AM 25 Good morning again. Thank you for sitting as jurors.

1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United  
3 States District Court, District of Hawaii, do hereby certify  
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,  
5 true, and correct transcript from the stenographically reported  
6 proceedings held in the above-entitled matter and that the  
7 transcript page format is in conformance with the regulations  
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, February 12, 2024.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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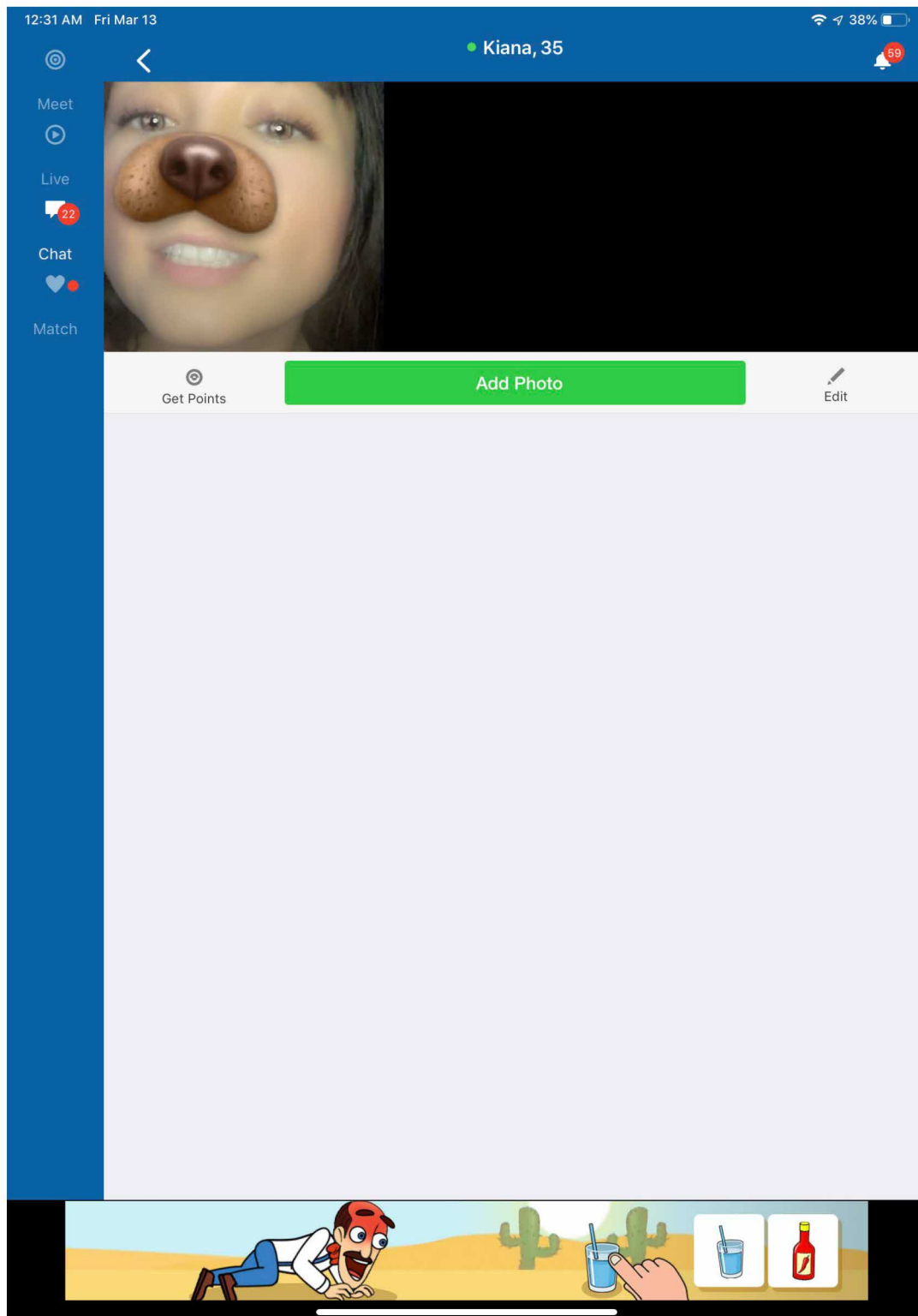
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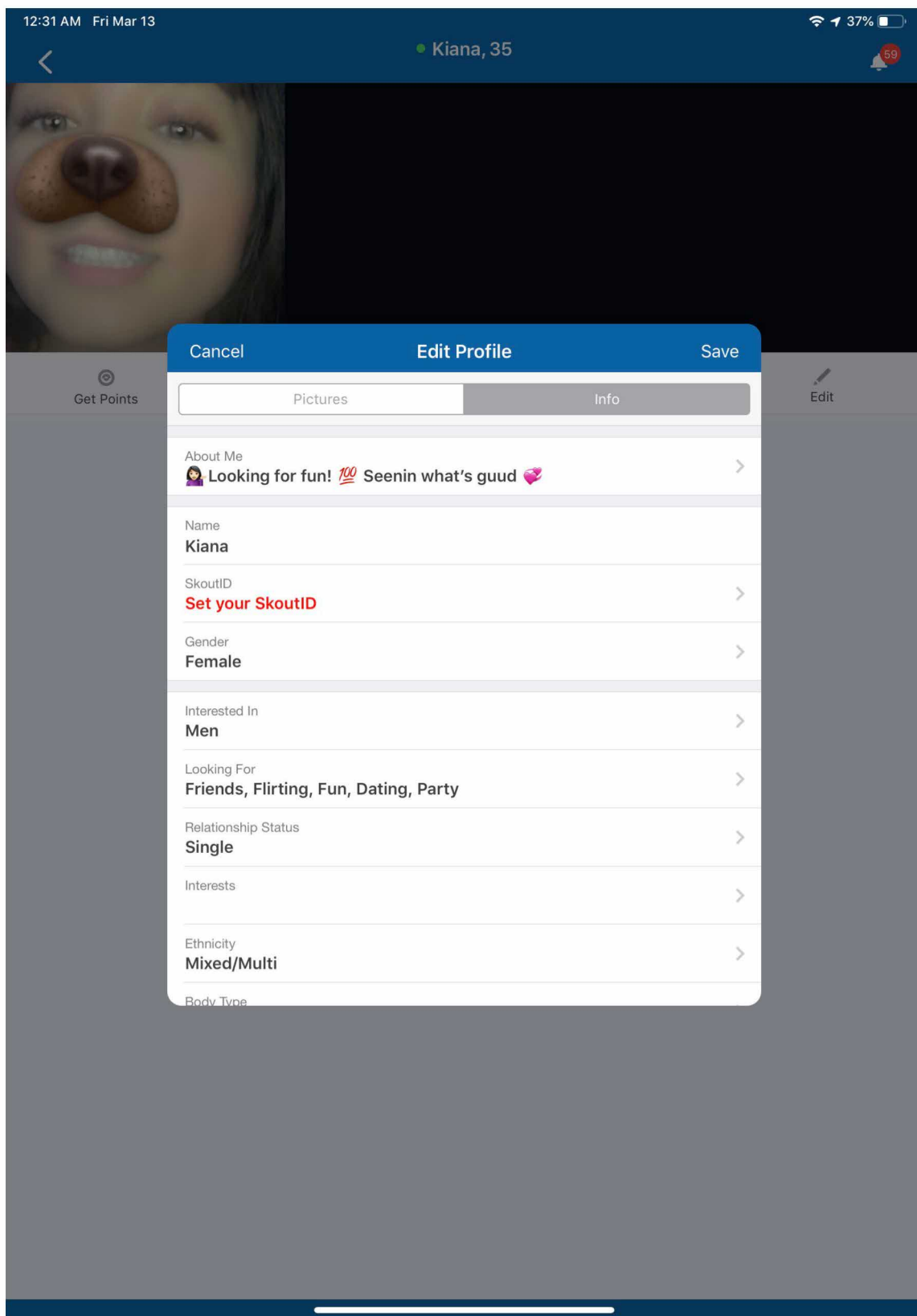
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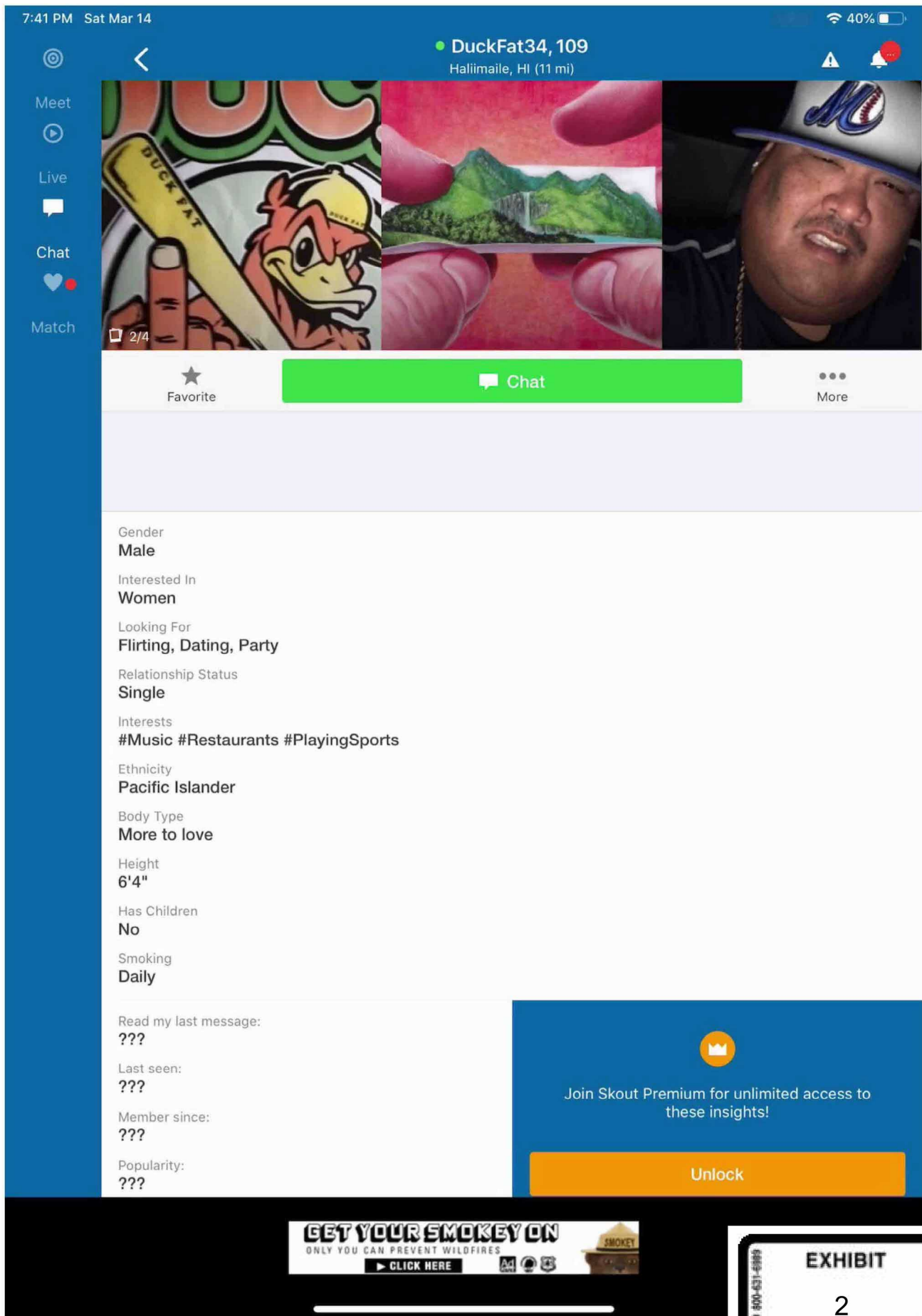
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2-SER-411



2-SER-412

CUMMINGS\_000744

**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and "Kiana"**

Speaker	Date	Time	Text Message
Cummings (808) 357-3711	2020/03/14	07:37:41 PM HST	Hi Kiana My name Lyle
Cummings	2020/03/14	07:38:00 PM HST	From skout lol
Kiana (808) 793-4791	2020/03/14	07:46:40 PM HST	👋
Kiana	2020/03/14	07:46:47 PM HST	howzit!!!
Cummings	2020/03/14	07:49:00 PM HST	You out in kihei ??
Kiana	2020/03/14	08:16:58 PM HST	Yeah. Crusin at my cousins place, her parents outta town
Cummings	2020/03/14	09:10:20 PM HST	what time I coming to pick you up
Cummings	2020/03/14	09:16:10 PM HST	You have a picture with no filter blocking your face
Kiana	2020/03/14	09:39:55 PM HST	yeah. but upfront, im waaaay younger. jus put a random number in my profile.
Cummings	2020/03/14	09:44:33 PM HST	Like how old .. age no matter if we going out hanging out having a good time
Cummings	2020/03/14	09:46:01 PM HST	What time you like me come down. ??
Kiana	2020/03/14	09:55:23 PM HST	Cool 😊. well, upfront Im 14, well I turn 14 next month, just hate stupid kids my age.
Cummings	2020/03/14	09:57:43 PM HST	I yah I'll grant you this once tonight I'll come pick you up ..
Kiana	2020/03/14	09:58:24 PM HST	grant me what???? 😞
Cummings	2020/03/14	09:58:29 PM HST	Let me see a picture with out a filter covering your face
Cummings	2020/03/14	09:59:06 PM HST	hang out tonight
Cummings	2020/03/14	10:00:07 PM HST	Come down rescue you for a few hours from your cousin
Cummings	2020/03/14	10:00:12 PM HST	Come down rescue you for a few hours from your cousin
Cummings	2020/03/14	10:03:00 PM HST	Have a good weekend

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**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and "Kiana"**

Speaker	Date	Time	Text Message
Kiana	2020/03/14	10:03:22 PM HST	
Cummings	2020/03/14	10:04:15 PM HST	You wanna go hang out ?..?
Cummings	2020/03/14	10:04:52 PM HST	Take you to the shops wailea or out Lahaina
Cummings	2020/03/14	10:05:12 PM HST	What time I can come pick you up tonight ?..?
Cummings	2020/03/14	10:10:57 PM HST	Yes, no ?..?
Kiana	2020/03/14	10:22:29 PM HST	maybe. sry drama wit my gf
Cummings	2020/03/14	10:23:23 PM HST	With your gf ??
Cummings	2020/03/14	10:28:42 PM HST	Let spoil you 
Cummings	2020/03/14	10:32:54 PM HST	Let me come pick you up take you away from the drama
Kiana	2020/03/14	10:41:37 PM HST	damn!! that sounds so much better than this stupid bs :)
Kiana	2020/03/14	10:41:55 PM HST	girlfriend drama
Cummings	2020/03/14	10:42:53 PM HST	I'll be your sugah daddy
Cummings	2020/03/14	10:43:02 PM HST	Send me couple more picture of you



**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and “Kiana”**

Speaker	Date	Time	Text Message
Kiana	2020/03/14	10:45:20 PM HST	
Kiana	2020/03/14	10:45:25 PM HST	I likey
Kiana	2020/03/14	10:45:47 PM HST	Can u send me pic 2?
Cummings	2020/03/14	10:47:11 PM HST	should I start to drive come down
Cummings	2020/03/14	10:47:16 PM HST	should I start to drive come down
Cummings	2020/03/14	10:47:26 PM HST	Ok
Kiana	2020/03/14	10:47:35 PM HST	
Cummings	2020/03/14	10:48:19 PM HST	So am I going to see you tonight ?.,
Kiana	2020/03/14	10:49:03 PM HST	maybe. gotta trynna get away from my girlfriend
Kiana	2020/03/14	10:49:10 PM HST	what u got in mind?
Cummings	2020/03/14	10:49:43 PM HST	what Evers you like do
Cummings	2020/03/14	10:49:59 PM HST	I get \$ for us have fun
Cummings	2020/03/14	10:50:42 PM HST	What you like do ?.?
Kiana	2020/03/14	10:55:22 PM HST	what kinda fun u gonna do wit a 13 year old girl? I can't go into bars 😞
Cummings	2020/03/14	10:56:01 PM HST	We can go to the beach n have our own fun
Cummings	2020/03/14	10:56:55 PM HST	Watch the the moon reflect on your body

**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and "Kiana"**

Speaker	Date	Time	Text Message
Cummings	2020/03/14	10:57:19 PM HST	As we lay n cuddle up together
Cummings	2020/03/14	10:57:40 PM HST	Lol nah jk
Cummings	2020/03/14	10:57:49 PM HST	What Evers
Kiana	2020/03/14	10:59:26 PM HST	cuddles? 😊
Cummings	2020/03/14	11:00:19 PM HST	you burn weed ?,
Kiana	2020/03/14	11:02:32 PM HST	yeah. but puts me to 😊
Cummings	2020/03/14	11:03:10 PM HST	I'll have some if you like 🤝
Cummings	2020/03/14	11:03:38 PM HST	So should I come down or you can't come out if I come down ?.?
Cummings	2020/03/14	11:04:59 PM HST	Lol why you don't answer
Kiana	2020/03/14	11:06:15 PM HST	My girlfriend is over rn. Watchin a movie
Cummings	2020/03/14	11:07:04 PM HST	Send a pic of you two
Kiana	2020/03/14	11:09:08 PM HST	u haven't even sent me 1 pic yet
Cummings	2020/03/14	11:11:30 PM HST	
Cummings	2020/03/14	11:11:58 PM HST	My profile picture

**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and "Kiana"**

Speaker	Date	Time	Text Message
			
Cummings	2020/03/14	11:14:48 PM HST	Is your gf going home soon ?.?
Kiana	2020/03/14	11:15:39 PM HST	already saw the profile pic
Kiana	2020/03/14	11:15:58 PM HST	💰💰💰
Kiana	2020/03/14	11:16:04 PM HST	how can I get one of those stacks!!!
Cummings	2020/03/14	11:17:31 PM HST	when you ride with me
Cummings	2020/03/14	11:18:13 PM HST	is tonight gonna happen for us or just talk
Kiana	2020/03/14	11:18:41 PM HST	what u gonna do?
Kiana	2020/03/14	11:18:48 PM HST	we
Cummings	2020/03/14	11:20:30 PM HST	Come down pick you up go by the beach
Cummings	2020/03/14	11:21:23 PM HST	Listen music talk n hang out for a few hours
Kiana	2020/03/14	11:25:43 PM HST	so just talk wit u and I get a stack?
Cummings	2020/03/14	11:27:36 PM HST	Few 💰💰
Cummings	2020/03/14	11:27:59 PM HST	You know you not going
Cummings	2020/03/14	11:32:03 PM HST	Yes or no
Cummings	2020/03/14	11:35:36 PM HST	Or we just do tomorrow Either shops of wailea, outlets in Lahaina or Victoria secrets
Kiana	2020/03/14	11:41:56 PM HST	what I not going?



**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and "Kiana"**

Speaker	Date	Time	Text Message
Kiana	2020/03/14	11:42:05 PM HST	u didn't even send me a pic yet
Cummings	2020/03/14	11:45:44 PM HST	What pic you like
Kiana	2020/03/14	11:46:32 PM HST	whatever
Cummings	2020/03/14	11:46:40 PM HST	You not going come with me .. you just talking like you like go
Cummings	2020/03/14	11:47:41 PM HST	Lol you want me come get you tonight ??
Kiana	2020/03/14	11:50:47 PM HST	Pic of u not from profile
Cummings	2020/03/15	12:06:30 AM HST	Good night
Kiana	2020/03/15	12:08:44 AM HST	im not playin games. why can't u send a pic.. all is former profile
Cummings	2020/03/15	12:11:57 AM HST	I no more any
Kiana	2020/03/15	12:13:00 AM HST	u like see pics of me but u don't have any?? 😞😞
Cummings	2020/03/15	11:01:44 AM HST	Good morning
Kiana	2020/03/15	11:03:53 AM HST	👋😞😞😞
Cummings	2020/03/15	11:04:18 AM HST	You still sleeping
Kiana	2020/03/15	11:06:09 AM HST	Jus wakin
Cummings	2020/03/15	11:06:38 AM HST	You have any plans for today ??
Kiana	2020/03/15	11:09:45 AM HST	Dunno yet. Cousin jus got back..she kinda get in irraz already 😞
Cummings	2020/03/15	11:11:01 AM HST	Can you get away .. let me take you shops of wailea couple hours or go by the beach
Kiana	2020/03/15	11:14:17 AM HST	Dunno yet. She all up in bizness rn 😞



**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and “Kiana”**

Speaker	Date	Time	Text Message
Cummings	2020/03/15	11:15:20 AM HST	Wanna go hang out .. couple hours
Cummings	2020/03/15	11:16:43 AM HST	Ok babes lmk
Kiana	2020/03/15	01:30:45 PM HST	Brah. So such stupid shit 🤡 I wanna go beach and cousin just fckin watching movies.
Cummings	2020/03/15	01:32:30 PM HST	Well let me come get you n disappear for a few hours
Cummings	2020/03/15	01:33:23 PM HST	Let's go buy you a 🍷 n go beach
Kiana	2020/03/15	01:34:15 PM HST	iirrrrrraaaaaazzzzzzzzz 🏍️ 🏍️
Kiana	2020/03/15	01:34:36 PM HST	I wish.
Cummings	2020/03/15	01:34:38 PM HST	Babes want me come get you
Kiana	2020/03/15	01:35:32 PM HST	shes cool and all.like my hanai sister but she's hella boring
Cummings	2020/03/15	01:36:13 PM HST	Let's go have our fun n you can go back be boring later
Kiana	2020/03/15	01:37:27 PM HST	Can't just skip on obv kine. She's all up in my biz cause she knows what I'm like..lol 🤡 🤡
Kiana	2020/03/15	01:38:22 PM HST	She's only 17, but she watch ova me more then my moms
Cummings	2020/03/15	01:39:27 PM HST	We should just go for little while
Kiana	2020/03/15	01:40:10 PM HST	Can later proly
Cummings	2020/03/15	01:40:56 PM HST	yeah lmk Give me at least 30/45 min early so I can get to kihei I stay up country
Kiana	2020/03/15	01:41:15 PM HST	Kk
Cummings	2020/03/15	01:41:21 PM HST	We can go do what Evers you like n go take you shopping
Cummings	2020/03/15	01:41:49 PM HST	What you think you wanna go do .?.?

**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and “Kiana”**

Speaker	Date	Time	Text Message
Kiana	2020/03/15	01:44:48 PM HST	Why u really wanna buy me 🍷 n 🍷? Just
Kiana	2020/03/15	01:45:30 PM HST	be real. Hate Games dat HS boys play
Cummings	2020/03/15	01:48:25 PM HST	We not playing games .. babes I'll spoil you if you wanna hang with me You just be REAL too
Cummings	2020/03/15	01:50:02 PM HST	What we get going be between us .. no one need to know where or how you being spoiled m taken cared of
Kiana	2020/03/15	02:08:58 PM HST	Am being REAL.. dats why I wanna know, not nyone else, lol. Jus sayin cus I can't jus breakout whenever.. my cousins parents come back tmrw
Cummings	2020/03/15	02:11:10 PM HST	Well when ever you can we go do things .. I'm down for what Evers you like n when you like go
Cummings	2020/03/15	02:12:16 PM HST	Look like Spring break going go on all month for you
Cummings	2020/03/15	02:12:33 PM HST	Where you go high school ?.?
Kiana	2020/03/15	02:16:25 PM HST	Hahah😂😂 right? 🧑🧑🧑🧑 Just started at Baldwin,
Cummings	2020/03/15	02:19:44 PM HST	fuck Baldwin lol send me a picture of you laying around bored 😞
Cummings	2020/03/15	02:28:32 PM HST	Wyd
Kiana	2020/03/15	02:34:18 PM HST	Fuck Baldwin???.? Why dat
Cummings	2020/03/15	02:35:05 PM HST	lol Maui High our island School
Cummings	2020/03/15	02:36:38 PM HST	Babes send me a picture of you laying around being bored
Kiana	2020/03/15	02:41:50 PM HST	Why that?
Kiana	2020/03/15	02:42:05 PM HST	U havnt even sent me one pic yet

**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and "Kiana"**

Speaker	Date	Time	Text Message
Cummings	2020/03/15	02:42:34 PM HST	Send me then I'll send you
Kiana	2020/03/15	02:42:48 PM HST	I do love the 🧩🧩 pic tho
Kiana	2020/03/15	02:44:40 PM HST	U send a pic wit peace sign and I'll send u one
Cummings	2020/03/15	03:10:42 PM HST	It's not sending
Cummings	2020/03/15	03:10:51 PM HST	The pictures
Kiana	2020/03/15	03:14:53 PM HST	?
Cummings	2020/03/15	03:15:19 PM HST	Trying to send you picture
Cummings	2020/03/15	03:15:31 PM HST	It won't go thru
Kiana	2020/03/15	03:33:41 PM HST	omg.
Kiana	2020/03/15	03:33:53 PM HST	😬
Cummings	2020/03/15	04:42:21 PM HST	
Kiana	2020/03/15	04:46:45 PM HST	:) K.. hold on.
Cummings	2020/03/15	04:48:03 PM HST	Send me picture of you laying in your Booty shorts bored
Kiana	2020/03/15	04:50:09 PM HST	




**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and “Kiana”**

Speaker	Date	Time	Text Message
Cummings	2020/03/15	04:52:41 PM HST	Still bored
Kiana	2020/03/15	04:53:05 PM HST	omg 😬 I not wearing booty shorts.
Kiana	2020/03/15	04:53:39 PM HST	yeah. jus chillin wit cousin and her GF
Cummings	2020/03/15	04:54:12 PM HST	Show me what you got on
Cummings	2020/03/15	04:54:55 PM HST	Your cousin is a guy or girl ?..?
Kiana	2020/03/15	04:55:50 PM HST	omg. brah why u being pushy wit da pics?
Kiana	2020/03/15	04:55:57 PM HST	girl
Cummings	2020/03/15	04:56:29 PM HST	Well you no let me come see you
Cummings	2020/03/15	04:56:39 PM HST	Sorry
Kiana	2020/03/15	04:57:51 PM HST	I cannot help rn 😬
Cummings	2020/03/15	04:58:49 PM HST	You can by sending me pic
Cummings	2020/03/15	04:59:21 PM HST	😂
Kiana	2020/03/15	05:09:02 PM HST	😬😬 lol
Kiana	2020/03/15	05:09:12 PM HST	Wyd?
Cummings	2020/03/15	05:09:37 PM HST	Nothing watching tv n 🤞🤞
Kiana	2020/03/15	05:12:15 PM HST	Cool. So how u makin all dat 🏠🏠?
Cummings	2020/03/15	05:12:53 PM HST	Work Monday-Friday
Cummings	2020/03/15	05:14:07 PM HST	Single no bills
Kiana	2020/03/15	05:19:14 PM HST	Lol. U look flashy tho.. hustlin 🍷🔪💎 lol. I like that



**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and “Kiana”**

Speaker	Date	Time	Text Message
Cummings	2020/03/15	05:31:45 PM HST	Just came back from Vegas
Kiana	2020/03/15	05:33:46 PM HST	Brah. I wanna go so bad. Nevah been
Cummings	2020/03/15	05:34:52 PM HST	I'm ready for go back
Cummings	2020/03/15	05:34:57 PM HST	Stay on the VEGAS strip Planet Hollywood has its own mall in it
Kiana	2020/03/15	05:45:29 PM HST	
Cummings	2020/03/15	05:47:14 PM HST	Lol you can't even Cruz fit couple hours yet you like go Vegas
Kiana	2020/03/15	05:51:44 PM HST	Lol. I can l8er on when cousin goes to her BF's place. We going down beach now.
Cummings	2020/03/15	05:52:20 PM HST	Ok
Kiana	2020/03/15	05:52:57 PM HST	How old u nyway?
Cummings	2020/03/15	05:53:37 PM HST	31
Kiana	2020/03/15	05:54:20 PM HST	Cool.
Cummings	2020/03/15	05:55:04 PM HST	You ok with it
Kiana	2020/03/15	05:58:33 PM HST	Yeah. I like older guys.. duh 😏😂
Kiana	2020/03/15	05:58:51 PM HST	U okay wit me being 13?
Cummings	2020/03/15	05:59:32 PM HST	ok .. so long your ok with me
Kiana	2020/03/15	06:01:33 PM HST	Yeah yeah.
Kiana	2020/03/15	06:04:55 PM HST	So what u lookin 4 do wit me bein 13?
Kiana	2020/03/15	06:05:04 PM HST	I can't go bars

**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and “Kiana”**

Speaker	Date	Time	Text Message
Cummings	2020/03/15	06:18:58 PM HST	Walk around the shops wailea holding your hand ... taking you to the beach n sleeping under the stars waking up to you .. renting hotel rooms during the weekends spoiling you .. late nights watching movies .. and what ever you like do
Cummings	2020/03/15	06:20:07 PM HST	Walk around the shops wailea holding your hand ... taking you to the beach n sleeping under the stars waking up to you .. renting hotel rooms during the weekends spoiling you .. late nights watching movies .. and what ever you like do
Cummings	2020/03/15	06:20:42 PM HST	What you want me to do with you ?..?
Cummings	2020/03/15	06:21:23 PM HST	Walk around the shops wailea holding your hand ... taking you to the beach n sleeping under the stars waking up to you .. renting hotel rooms during the weekends spoiling you .. late nights watching movies .. and what ever you like do
Kiana	2020/03/15	06:21:47 PM HST	So u wanna like be my BF? Keep it in the friend zone?
Cummings	2020/03/15	06:23:27 PM HST	What you want ?..?
Cummings	2020/03/15	06:23:40 PM HST	What you want ?..?
Cummings	2020/03/15	06:23:40 PM HST	What you want ?..?
Cummings	2020/03/15	06:23:41 PM HST	So I don't expect to much or do to much n disrespect you
Kiana	2020/03/15	06:25:24 PM HST	I like have fun, n like guys who keep it 🍑 .. sry
Cummings	2020/03/15	06:26:12 PM HST	For sure we going have fun 😊
Kiana	2020/03/15	06:26:19 PM HST	sry but can't be having a 31yo full time bf
Cummings	2020/03/15	06:26:44 PM HST	Hopefully we can. Start from tonight

**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and “Kiana”**

Speaker	Date	Time	Text Message
Kiana	2020/03/15	06:26:51 PM HST	Sry my phone glitching up
Cummings	2020/03/15	06:26:56 PM HST	on the down low can
Cummings	2020/03/15	06:27:23 PM HST	You still down the beach
Kiana	2020/03/15	06:27:50 PM HST	What u wanna do for fun then?
Kiana	2020/03/15	06:28:13 PM HST	We walkin back up
Cummings	2020/03/15	06:28:41 PM HST	Eat your pussy
Cummings	2020/03/15	06:29:05 PM HST	Eat your pussy
Cummings	2020/03/15	06:29:07 PM HST	send me a picture of you n the sunset
Kiana	2020/03/15	06:30:24 PM HST	we walkin back to her house already
Kiana	2020/03/15	06:33:49 PM HST	U good at that??? 🍑😏
Cummings	2020/03/15	06:34:54 PM HST	You didn't take a picture down by the beach
Cummings	2020/03/15	06:37:51 PM HST	wyd
Kiana	2020/03/15	06:40:02 PM HST	k. hold on.
Cummings	2020/03/15	06:41:45 PM HST	You gonna find out 😏
Cummings	2020/03/15	06:42:17 PM HST	You gonna find out 😏
Cummings	2020/03/15	06:42:18 PM HST	You gonna find out 😏
Kiana	2020/03/15	06:42:44 PM HST	😏😏😏😏 I like that
Cummings	2020/03/15	06:43:24 PM HST	Let gonna let me shave you first
Kiana	2020/03/15	06:44:18 PM HST	Lol. Don't get much hair nyway. Hana



**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and "Kiana"**

Speaker	Date	Time	Text Message
Cummings	2020/03/15	06:44:20 PM HST	You going to let me ??
Kiana	2020/03/15	06:44:28 PM HST	hapa Japanese
Cummings	2020/03/15	06:44:45 PM HST	any guy eat you yet
Kiana	2020/03/15	06:45:29 PM HST	My ex bf tried. He was horrors tho 😬
Cummings	2020/03/15	06:46:12 PM HST	I'm gonna eat you till you cum a few times on my face babes
Cummings	2020/03/15	06:46:37 PM HST	get your pussy so wet
Kiana	2020/03/15	06:47:15 PM HST	Lol. Make it rain? 🌧️🌧️🌧️
Kiana	2020/03/15	06:47:33 PM HST	Lololol
Cummings	2020/03/15	06:47:54 PM HST	Have you slowly sat on me taking me in you slowly
Cummings	2020/03/15	06:48:03 PM HST	You must be so tight
Cummings	2020/03/15	06:48:38 PM HST	You gonna squirt when I make you cum
Cummings	2020/03/15	06:49:45 PM HST	can't see with the light in the back
Kiana	2020/03/15	06:49:50 PM HST	
Kiana	2020/03/15	06:49:51 PM HST	Lolololol... just wit my exbf. He wasn't dat big 🍆😬
Cummings	2020/03/15	06:50:53 PM HST	Your cousin going to leave soon ??
Cummings	2020/03/15	06:51:14 PM HST	I'm gonna head down
Kiana	2020/03/15	06:52:27 PM HST	Can u make it rain 📺📺📺 over my body? Lol
Cummings	2020/03/15	06:52:35 PM HST	Jump in the shower I'm gonna head down pick you up .. take a few pic in the shower for me 🙏😬😬



**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and "Kiana"**

Speaker	Date	Time	Text Message
Cummings	2020/03/15	06:52:48 PM HST	Yes I'll bring some for you tonight
Kiana	2020/03/15	06:53:13 PM HST	😊😊😊😊😊
Cummings	2020/03/15	06:53:15 PM HST	Or make me a video
Cummings	2020/03/15	06:53:41 PM HST	You be ready by 7:45 ?..?
Kiana	2020/03/15	06:53:42 PM HST	My cousin still home.. I gotta make n excuse to leave..
Kiana	2020/03/15	06:53:57 PM HST	We stay off Kilohana
Cummings	2020/03/15	06:54:14 PM HST	You gotta run store get pads lol
Cummings	2020/03/15	06:55:34 PM HST	By the fire station
Kiana	2020/03/15	06:55:43 PM HST	😂
Kiana	2020/03/15	06:57:26 PM HST	Yeah. Jus down from there
Kiana	2020/03/15	06:57:37 PM HST	U got condoms?
Kiana	2020/03/15	07:01:11 PM HST	I can meet u kilohana park,
Cummings	2020/03/15	07:02:14 PM HST	Ok 7:45 ?..?
Kiana	2020/03/15	07:02:51 PM HST	Yah can
Cummings	2020/03/15	07:05:19 PM HST	Ok see soon
Kiana	2020/03/15	07:06:59 PM HST	Kk.
Cummings	2020/03/15	07:07:30 PM HST	You gonna shower n take me a picture
Cummings	2020/03/15	07:07:41 PM HST	Or video
Kiana	2020/03/15	07:07:59 PM HST	i stay tryin to get away from my cousin.

**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and "Kiana"**

Speaker	Date	Time	Text Message
Kiana	2020/03/15	07:12:06 PM HST	
Kiana	2020/03/15	07:18:07 PM HST	I gonna leave now...
Kiana	2020/03/15	07:18:12 PM HST	where u stay?
Cummings	2020/03/15	07:18:40 PM HST	Coming
Cummings	2020/03/15	07:19:06 PM HST	Almost passing puunene
Kiana	2020/03/15	07:20:42 PM HST	ok.
Cummings	2020/03/15	07:20:59 PM HST	I like that last picture .. wish you wouldn't cover your beautiful face
Cummings	2020/03/15	07:21:27 PM HST	Are you wearing that tonight
Kiana	2020/03/15	07:22:32 PM HST	lol. ty... kinda self concious bout my skin..
Kiana	2020/03/15	07:22:51 PM HST	no. wearing pink hoody
Cummings	2020/03/15	07:23:29 PM HST	Ok no panties ?.?
Kiana	2020/03/15	07:24:00 PM HST	hahahha. i get thong :)
Kiana	2020/03/15	07:24:45 PM HST	Theres a weirdo at the dog park... Imm walk down Kilohana to the parking lot across Sidewalks
Cummings	2020/03/15	07:24:59 PM HST	Ok
Kiana	2020/03/15	07:25:16 PM HST	what kinda car u got?

**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and “Kiana”**

Speaker	Date	Time	Text Message
Cummings	2020/03/15	07:26:14 PM HST	Toy truck
Kiana	2020/03/15	07:26:54 PM HST	ok. U wanna walk over to the beach?
Cummings	2020/03/15	07:27:42 PM HST	Let's go drive to a spot by the beach
Kiana	2020/03/15	07:28:36 PM HST	ok, u dont wanna cruise keawakapu?
Cummings	2020/03/15	07:29:05 PM HST	The gate not going close
Kiana	2020/03/15	07:29:55 PM HST	oh. i dunno. okay den
Kiana	2020/03/15	07:33:29 PM HST	Yeah think it gonna close.
Kiana	2020/03/15	07:33:39 PM HST	can park on the street tho
Cummings	2020/03/15	07:33:59 PM HST	Just getting into kihei
Kiana	2020/03/15	07:34:11 PM HST	Ok.
Kiana	2020/03/15	07:35:21 PM HST	i stay by entrance to sidewalks. we can walk down beach from here
Cummings	2020/03/15	07:37:45 PM HST	I no like leave my truck there
Kiana	2020/03/15	07:38:20 PM HST	can park on street
Kiana	2020/03/15	07:40:41 PM HST	we can jus cruise beach for lil bit
Kiana	2020/03/15	07:45:47 PM HST	what color your truck? did u just pass me?
Cummings	2020/03/15	07:48:40 PM HST	Where you
Cummings	2020/03/15	07:49:21 PM HST	Come jump in
Cummings	2020/03/15	07:49:32 PM HST	Hurry up
Kiana	2020/03/15	07:49:41 PM HST	Come here

**United States v. Lyle Rikio Cummings**  
**Text Messages Between Cummings and “Kiana”**

Speaker	Date	Time	Text Message
Cummings	2020/03/15	07:50:12 PM HST	Cross the street now
Kiana	2020/03/15	07:56:15 PM HST	test
Kiana	2020/03/15	07:56:17 PM HST	test
Kiana	2020/03/15	07:56:18 PM HST	test
Kiana	2020/03/15	07:56:20 PM HST	test
Kiana	2020/03/15	07:56:21 PM HST	test
Kiana	2020/03/15	07:56:22 PM HST	test
Kiana	2020/03/15	07:56:23 PM HST	test
Kiana	2020/03/15	07:56:25 PM HST	test
Kiana	2020/03/15	07:56:26 PM HST	test
Kiana	2020/03/15	07:56:29 PM HST	test



**SUSPECT: LYLE RIKIO CUMMINGS**  
**DATE: March 15, 2020**

**Case Number: HL07QS20HL0007**

**INTERVIEW OF LYLE RIKIO CUMMINGS**

The following was transcribed by Homeland Security Investigations (HSI) Special Agent (SA) Special Agent (SA) Murray Acosta from October 2-6, 2020. The transcript describes an audio/visual recording interview of Lyle Rikio CUMMINGS at the Maui Police Department, Kihei Substation which took place on March 15, 2020.

Legend:

LAGG: Maui Police Department, Detective Lee Ann Galario-Guzman  
LC: Lyle Rikio CUMMINGS  
LD: HSI SA Laura Dai  
IA: Inaudible  
UI: Unintelligible

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(Video Camera Activated)

(LD presents her badge and credentials for LC to observe and inspect.)

LD: I'm a Special Agent with Homeland Security [Investigations]. We're working together.

(LC affirmatively nods his head.)

Yeah. Yeah.

LAGG: Okay. So...um...before I ask questions, we're going to read you your rights and then... (UI) it's up to you if you want to say anything or not. Okay? But...um... let me start with this okay.

(LAGG presents MAUI POLICE DEPARTMENT, YOUR CONSTITUTIONAL RIGHTS form to LC.)

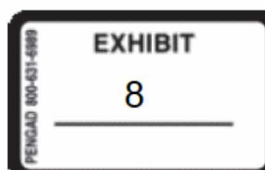
Okay, so...today's date is March 15, 2020. The time now is 8:36 p.m. We're in the Kihei Police Station, in interview room number two. Um...state your full name.

LC: Lyle R. Cumming'...Rikio Cummings.

LAGG: Ly'...Lyle...

LC: Rikio Cummings.

LAGG: Rikio...?



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(LC affirmatively nods his head.)

Okay. Okay...uh...this is for report number 20-010287. Um...regarding Electronic Enticement of a Child in the First Degree. Okay. Lyle, before we start, yeah, you can...um...write your full name over here on the top.

(LAGG hands LC a pen to write with. LC writes his name on the MAUI POLICE DEPARTMENT, YOUR CONSTITUTIONAL RIGHTS form.)

And then I going read this aloud to you, you just g'...follow with me. Yeah, after every sentence I like you initial...after I'm done reading the...the sentence. It's just so you understand it. Alright?

(LAGG reads from the MAUI POLICE DEPARTMENT, YOUR CONSTITUTIONAL RIGHTS form.)

"Before we ask you any questions, we want to tell you about your rights." So if you understand that, can you initial.

(LC writes his initial.)

Uh..."You have the right to remain silent." You understand? You understand that?

(LC writes his initial.)

LC: Yes.

LAGG: Okay, "Anything you say can be used against you in court."

LC: Yes.

(LC writes his initial.)

LAGG: You understand? Okay. "You have the right to talk to a lawyer for advice before we ask you any questions and to have your lawyer with you during questioning." You understand?

LC: Yeah.

(LC writes his initial.)

LAGG: Okay...um..."If you cannot afford a lawyer one will be appointed for you before any questioning." You understand?

LC: Yes.

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(LC writes his initial.)

LAGG: Okay. Initial please. Okay...so...we'll ask you...skip that part and just like you read this one out loud. And if you understand it sign, today's date, and time.

LC: "I understand the English language. I have read and heard this statement of my rights and I understand what my rights are."

LAGG: You understand, yeah, what just read?

LC: Yeah.

LAGG: Okay. Just sign

(LC signs his name.)

Today's date is March 15, 2020.

(LC writes the date.)

Right now it's 8:38 p.m.

(LC writes the time.)

Okay and the next line is "Would you like to waive your rights and speak with me now?" So...like I...like how you...right now is...if you want to speak with us and then later on say you don't to speak with us, that's fine. We'll end the conversation and...and you get...um...taken with the officers out there.

LC: Okay.

LAGG: You want to speak with me?

LC: Yeah.

LAGG: Okay.

(LC writes his initials on the line corresponding with the word "Yes" indicating that he wished to speak with law enforcement. LC then hands the RIGHTS form to LAGG.)

(LAGG signs her name on the "Warnings given by" section on the form and writes the date and time.)



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Okay, Lyle, so...tonight...um...

(LD signs her name on the "Witness" section on the form and writes the date and time.)

You know why you're here?

LC: Yes.

LAGG: Okay. Why...why you're here?

LC: Because I was...on the phone with one...supposedly, one young girl.

LAGG: Okay. How young did this girl say she was, the person you was on the phone with?

LC: On the phone said eighteen.

LAGG: You sure she said eighteen?

LC: On the phone it said eighteen.

LAGG: What phone...what phone like...what are you talking about?

LC: Get...get their name and age on the top.

LAGG: Okay you were on...what...your...your regular phone or some kind of social media site?

LC: Yeah, one site.

LAGG: Okay, what site was this?

LC: *Skout*.

LAGG: You was on *Skout*? So on *Skout* she said she was eighteen?

LC: It had it on top...eighteen.

LAGG: Did she talk to you in any other format? Did she continue to talk to you on *Skout* or...did she talk to you in any other way?

LC: (UI.)

LAGG: Did she send you messages? You sent her messages?



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LC: We both sent back and forth.

LAGG: Okay.

LC: Then she gave me her number.

LAGG: Okay, so you got her number?

LC: She gave me her number.

LAGG: Okay.

LC: Text her.

LAGG: Okay, so you were texting her?

LC: Yup. (Affirmative.)

LAGG: Okay, and so what was the conversation then?

LC: Um... "What you like do?" and I... was, "Whatever. If you like hang out."

LAGG: Okay. Okay, so...um...what else was said in that conversation?

LC: She kept asking what I like do? What I like do? I said, "I don't know. If you like hang out, we can hang out."

LAGG: Okay, did she at any time mention how old she was during those conversations?

LC: Uh...she mentioned her cousin was seventeen.

LAGG: Her cousin was seventeen. What about her? Did she mention how old she was?

LC: Um...no. (Negatively shakes his head.)

LAGG: Okay, so...not at any time did sh'...you...you sure she never mention her age because...um...

LC: I think she said...she going be...she was fourteen or something.

LAGG: Fourteen? Okay, she said she was going to turn fourteen, I think, yeah? She was going turn fourteen next month. But if I understand correctly, from the messages.

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LC: I think so.

LAGG: Okay. So you know sh'...you know, at that point, she was...around thirteen or fourteen?

LC: (UI) she was young.

LAGG: Yeah. And you continue conversation?

LC: Um...she kept asking, oh, if I, "What you like do? What you like do?"

LAGG: Mm-hmm. (Affirmative.)

LC: I was like, "Oh, whatever, if you like hang out." 'Cause she was having problems with her cousin or something she said.

LAGG: Okay. And...you remember what else was said?

LC: Mmmm. (Pondering.) (UI) cruise with you if you like.

LAGG: Okay. And was there any conversation of wanting to...um...participate in any type of sexual...

LC: At one point...

LAGG: ...contact?

LC: ...she kept going and going, I just wen'... say I would do something.

LD: Okay.

LAGG: Remember what you said?

LC: Yeah.

LAGG: What was that you said on text?

LC: "I'll eat your pussy."

LAGG: Okay, you told her that on text messaging?

LC: Yes.

LAGG: Okay, and...did the conversation continue? You remember what else you said?

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LC: Umm. (Negatively shakes his head.) That's about it.

LAGG: That's about it.

LC: (UI) but... I just... I wasn't in for that... I just wanted for cruise.

LAGG: Okay, so you remember telling her that you were wanting to be in a relationship with her?

LC: No.

LAGG: And you were going to treat her to whatever she wants?

LC: Yes.

LAGG: Bring her to...

LC: (UI.)

LAGG: Mm-hmm. (Affirmative.) You remember that conversation?

LC: Yes.

LAGG: Okay. Um...also you remember...uh... asking her...um... wanting to sh'... telling her that you would...you would shower her with money?

LC: She wanted me to shower her with money, she said.

LAGG: Okay. And you said you was going to bring down some money...for her, in the conversation you guys...text conversation you guys had?

LC: I said, I would have money with me.

LAGG: You said you would have money with you. Did you bring money with you...

LC: (Shrugs his shoulders.)

LAGG: ...to give to her?

LC: No, I guess...well, what I carry with me.

LAGG: What you usually carry with you?

LC: I have a few hundred.

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LAGG: A few hundred. What is a "...few..." like...?

LC: Three hundred.

LAGG: Three hundred. That's all you...you have?

LC: Uh...uh...I had...uh...I just got paid so I had...(UI) had my paycheck with me.

LAGG: How much you usually get paid?

LC: I had eleven hundred.

LAGG: Okay. So you had eleven hundred i'...on you?

LC: No. (Negatively shakes his head.) I did not.

LAGG: You just had three hundred from the eleven hundred?

LC: I had...I had a little more...I had more than three hundred. I not sure exactly.

LAGG: Okay. So you have around three hundred? A little bit more or a little bit less?

LC: Maybe five...five...five hundred or something.

LAGG: Um...do you do this often?

LC: I...I go on the website for...but I never did go to (UI).

LAGG: Okay, you ever go...um...on any other sites...besides *Skout*?

LC: I have like *MeetMe* but I never do...I don't go on that.

LAGG: Okay. So you have a *MeetMe* account?

LC: I...uh...it's same as...it's same as *Skout*, I believe.

LAGG: Same as *Skout*? Okay. So you have a *Skout* accout, *MeetMe* account. Any others?

LC: *Snapchat*.

LAGG: *Snapchat*.

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LC: *Instagram.*

LAGG: Okay.

LC: *Facebook.*

LAGG: Okay.

LC: I don't know if *TikTok* is one of those whatever.

LAGG: Okay. Have you ever...um...been involved in any other...um...in other relationships with any of the other people you chat with?

LC: Oh, I usually before (UI) Vegas (UI).

LAGG: And what is this...through just text messaging or you...

LC: Hmmm. (Ponders.)

LAGG: 'Cause certain parts of Vegas is legal, right, for...outside of Vegas...um...actually in Nevada...

LC: Yeah.

LAGG: ...right? Okay, so...

LC: (UI) for meet people.

LAGG: "...for meet people." Okay...um...let me...this ques'...let me read...read this question and...: Anybody under the age of sixteen?

LC: (Negatively shakes his head.)

LAGG: You ever been involved with...any...

LC: No.

LAGG: ...female under the age of sixteen?

LC: No.

LAGG: Okay. So you saying that this is your first time?

LC: I wasn't involved with her?

LAGG: Involved with who?

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LC: This girl.

LAGG: Okay. No but (UI) are you...were you involved with anybody else under the age of sixteen...

LC: No. (Negatively shakes his head.)

LAGG: ...besides today?

LC: No. (Negatively shakes his head.)

LAGG: And d'...do you take medication for anything?

LC: Yeah.

LAGG: What you take medication for?

LC: High blood pressure, diabetes...

LAGG: Mm-hmm. (Affirmative.)

LC: ...all kind.

LAGG: Okay. And you took your medication already tonight?

LC: I take it every morning.

LAGG: (UI) every morning. Where is that medication now?

LC: At home.

LAGG: So the medication that you going need?

LC: (IA.)

LAGG: You take it every morning: your blood pressure and diabetes.

LC: (UI.)

LAGG: Okay. Um...other than that, you...you do any other type of drugs or you...you took any other type of drugs?

LC: Marijuana.

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LAGG: Marijuana. Guess when...how long ago was it?

LC: Hmm. (Ponders.) Like six o'clock this evening...

LAGG: Okay.

LC: ...after dinner.

LAGG: Okay. But it's not going to prevent you from like... speaking with us or... you know, making sound decisions right?

LC: It shouldn't. (Negatively shakes his head.)

LAGG: Okay. Are you willing to do...um...polygraph exam, if we are able to do it today?

LC: Uh...

LAGG: A lie detector test?

LC: ...(UI) I like talk to my lawyer.

LAGG: You like talk to your attorney? Okay. Alright. And you like talk to your lawyer because of the polygraph?

LC: Yeah.

LAGG: You fine talking with us still or you...you want to talk to your attorney already?

LC: Depends on the questions.

LAGG: Okay. So you're still willing for speak with us?

LC: Yeah.

LAGG: Okay.

LD: Okay.

LAGG: So y'...y'...you're telling us, this is the first time you've been involved with...conversation with an underage?

LC: Yes.

LAGG: Okay, you've never done this before?

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LC: No.

LAGG: Um...

LC: (Turns away and coughs.)

LAGG: ...so if we looked at your...your *Skout* account, would we be...would we find information where you're chatting with somebody under the age...would it show that...any other people besides who you spoke with today?

LC: (UI) if it's (UI) I just put in...I just...I put anything on *Skout*.

LAGG: Okay. (UI).

LC: (UI).

LAGG: (UI.) And so...the person that you speaking with tonight...before you got here, what was her name?

LC: Uh...Kiana (phonetic) I believe.

LAGG: Kiana.

LC: (UI) on top there.

LAGG: That's what said on the...on the account.

LC: Yes.

LAGG: Okay.

(Brief pause.)

(To LD.) (IA.)

LD: Um...I do have some questions regarding...um...your chat with Kiana, earlier. Um...if you can refresh your memory. At one point, earlier, you said that...um...you were going to...she asked you to shower her with money.

LC: Mm-hmm. (Affirmative.)

LD: How did that conversation came about?

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LC: She asked me... she said, oh, if I'm hustling 'cause I... I show a lot of money... oh, my pictures I get money.

LD: Mm-hmm. (Affirmative.)

LC: 'Cause I put pictures of money.

LD: Okay, what else?

LC: What you mean, "What else?"

LD: Um... like, you were going to take her shopping and stuff. Wha'... tell me about that?

LC: I just told her, "If you like go hang out," I... I go take her shopping.

LD: Mm-hmm. Mm-hmm. (Affirmative.) What was your intent to take her to shopping?

LC: Make her feel good.

LD: Mm-hmm. (Affirmative.) Were you planning to buy her stuff?

LC: Umm... I'm not sure.

LD: Or was it just like... talking about it?

LC: (UI) talk.

LD: Mm. (Affirmative.) Did you have plan to take her to Wailea or anywhere to shop... and buy her stuff?

LC: No.

LD: Mmm, okay.

LAGG: 'Cause in your text conversation I believe it says that you will shower her with gifts.

LC: Not, I said I would (UI) her go.

LAGG: (UI.)

LD: Mm-hmm. Mm-hmm. (Affirmative.)

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LAGG: (UI) but... I'm saying that "...if you want to be my girlfriend..." and then she's saying, "What do you want? What do you want?" and you ask her what she wanted?

LC: Right.

LAGG: Yeah, so you're trying to initiate a relationship with Ki'... Kiana?

LC: No.

LAGG: No? Just (UI) to hook up?

LC: Just hang out. She said like she needed... she was in trouble... like she... she... I don't know. Nowadays, kids they get in trouble sometimes they need somebody just for talk to.

LD: Mm-hmm. (Affirmative.)

LC: It seems like she kind of in that situation?

LD: Mm-hmm. (Affirmative.) Are you in any relationship with anyone that... right now?

LC: Yes, I am.

LD: Okay, are you married?

LC: No.

LD: Okay, you have a girlfriend?

LC: Yes.

LD: Okay, you mind sharing her name?

LC: Vienna. (Phonetic.)

LD: Vien'... how old is Vienna?

LC: She's thirty-seven.

LD: Mm-hmm. (Affirmative.) Does she know that you...

LC: (Negatively shakes his head.)

LD: ...came out? Okay. Are you living with... with her... right now?

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LC: I kind of stay with her.

LD: Okay, where does she live?

LC: On [REDACTED]

LD: [REDACTED] Oh, okay. You said she's about thirty-six years old?

LC: Thirty-six. Thirty-seven. Ten...

LD: Thirty-six...

LC: ...years younger.

LD: ...thirty-seven. What's Vienna's last name?

LC: Ki'... Kihana... Kihana... Kihana

LD: Kihana.

LC: (UI.)

LD: Okay. Does she work?

LC: Yes.

LD: Where does she work?

LC: [REDACTED]

LAGG: [REDACTED]

LD: Oh, okay.

LAGG: [REDACTED]

LD: Okay, sorry I'm not familiar with...

LAGG: No. No. No, I'm familiar with the area.

LD: You have any children?

LC: No.

LD: No. Anyone else you have a relationship with besides your girlfriend?

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LC: No.

LD: Hmm. (Ponders.) How long have you been with Vienna?

LC: Umm...maybe two...three years?

LD: Two to three years. Um...tell me something about her. What do you guys normally do?

LC: Oh, she works late hours so...I usually just sleep over and then go work and then we go have dinner (UI).

LD: Mm-hmm. Mm-hmm. (Affirmative.) Okay. I'm trying to take you back to when you were talking to Kiana. You mentioned that she asked you to shower her with money, right?

LC: She asked me, yeah.

LD: Yeah, she asked you. How do you respond to that?

LC: See I don't remember?

LD: Mm...okay, what I'm trying to...to have you...when you met up with Vienna, is she the type that also wanted you to shower with...with money as well or...?

LC: No.

LD: No.

LC: She don't ask me for that.

LD: Okay. Any'...anybody else that...ask you...or you attempt to offer any kind of money to them for any kind of sexual relationship?

LC: No.

LD: No. Okay. (To LAGG.) Alright.

LAGG: Hey, Lyle, just a few...um...information. "Lyle," yeah, is your...Lyle Cummings?

LC: Yes.

LAGG: Yeah. Your birthdate, Lyle?

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LC: 8-9-73.

LAGG: And your Social Security Number.

LC:

[REDACTED]

LAGG: And your home address? Where you live?

LC: 24 Nena.

LAGG: Elena?

LC: Nena.

LAGG: Nena.

LC: N-e-n-a.

LAGG: Okay. Uh... Haliimaile?

LC: Yes.

LAGG: Okay. Um... where do you work at?

LC: Um... (UI) in Kihei.

LAGG: Um... what do you do for them?

LC: T.M.O.

LAGG: What is that?

LC: Tractor Motor Operator.

LAGG: Tractor Motor Operator.

LC: Parts Department.

LAGG: Okay. You have any other number you can be reached at?

LC: No. Well, my home number but that phone not that good.

LAGG: Okay, what is... what is the home phone number 'cause we... what happens is... um... you never get consent to search for your truck so we're going to apply for a search warrant and your phone is in there, as well.

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LC: Mm-hmm. (Affirmative.)

LAGG: There is also an application for a search warrant on the phone. Okay.  
Um... what is the phone number for home?

LC: 8-0-8-5-7-2-7-5-8-3.

LAGG: Okay. And this is the... another way to get a hold of you?

LC: (IA.)

LAGG: You have another number we can get a hold of you?

LC: (IA.)

LAGG: No? Okay.

LD: What about your girlfriend?

LC: It's...

LD: You have her number?

LC: ...(UI) I don't have her number... on me (UI).

LAGG: (UI) your phone.

LD: It's on your phone?

LAGG: Okay.

LD: Okay. The phone that you were using, what number was it?

LC: 8-0-8-3-5-7-3-7-1-1

LD: Okay, who is this phone subscribed to? Are you the subscriber of this phone?

LC: Yes.

LD: Which services you have?

LC: Verizon.

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LD: Verizon. How long have you been using this particular number in...with Verizon?

LC: Oh, long time.

LD: Like... more than five years?

LC: Oh, yeah. (UI.)

LD: Less than five? One year?

LC: Maybe twenty years.

LD: Maybe five years.

LAGG: Twenty years.

LD: Twenty. Oh, okay.

LAGG: Okay.

LD: Anybody else have access to your phone? Are you the only person using it?

LC: Yeah.

LD: Okay. Is it password protected?

LC: With a number?

LD: Yeah, so a number.

LC: Mm-hmm. (Affirmative.)

LD: So it has a...a number (UI) iPhone...

LC: Mm-hmm. (Affirmative.)

LD: ...or...or...something like that. Okay.

LAGG: Yeah, what kind of phone do you have?

LC: iPhone.

LAGG: What brand? iPhone 7?

**M. ACOSTA**

**SUSPECT: LYLE RIKIO CUMMINGS**

**DATE: March 15, 2020**

**Case Number: HL07QS20HL0007**

LC: (Affirmatively raises his eyebrows.)

LD: Okay. Have you given your password to anybody?

LC: The Detective.

LD: The Detective, okay. So...you've been using this iPhone – today is what? Sunday – what about the last five days?

LC: That's the only phone I got.

LD: Okay, so the phone have always been in your possession?

LC: Yes.

LD: Okay. Alright.

LAGG: Yeah.

LD: You have any question for me?

LAGG: Or for us?

LD: For us?

LC: (Negatively shakes his head.)

LAGG: Okay. Like...um...what I explained earlier, when I was reading you your rights, the charges, Electronic Enticement of a Child in the First Degree...okay...um...the investigation is still ongoing so...um...we're going to check if there are more charges and so it's a pending investigation; therefore...um...I know you trying to make a phone call right now because it's still pending – the investigation – but once we're...um...clear with the investigation, the detective will come see you to let you know you can make your phone call and/or give you the...your bail amount. Okay.

LC: (Affirmatively nods his head.)

LAGG: You have...

LC: (Negatively shakes his head.)

LAGG: ...any other questions for us? No?

LC: No. (Negatively shakes his head.)

**M. ACOSTA**



**SUSPECT: LYLE RIKIO CUMMINGS**  
**DATE: March 15, 2020**

**Case Number: HL07QS20HL0007**

LAGG: Okay.

LD: Well, thank you for being cooperative with us. I appreciate you being honest and talking to us.

LC: (Affirmatively nods his head.)

LAGG: Okay, thank you, Lyle. End of interview at 2057 [hours].

LD: (UI.)

(LAGG and LD exit the interview room. LC remains in the interview room.)

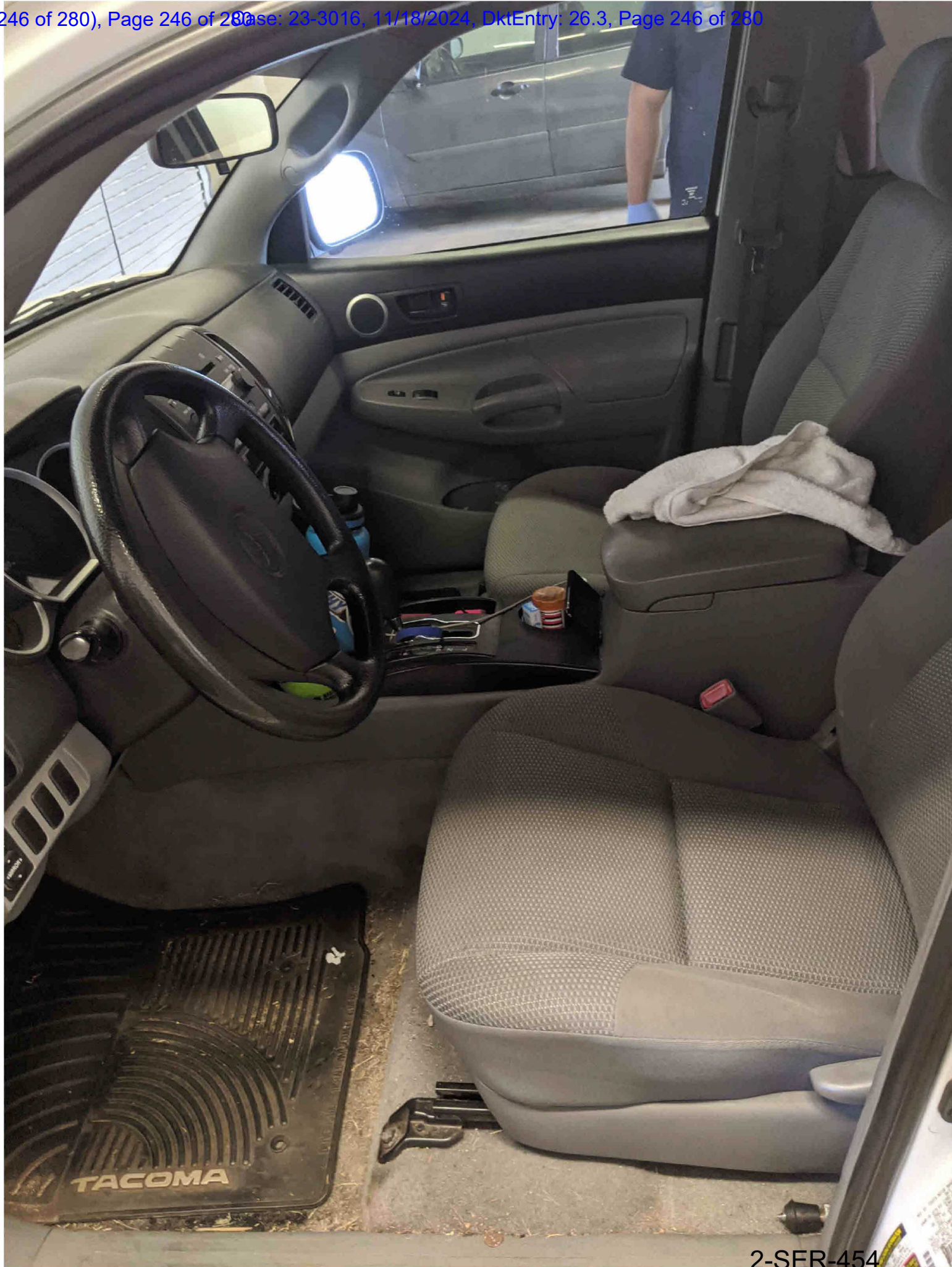
(Video recorder is deactivated.)



EXHIBIT  
11







2-SER-454

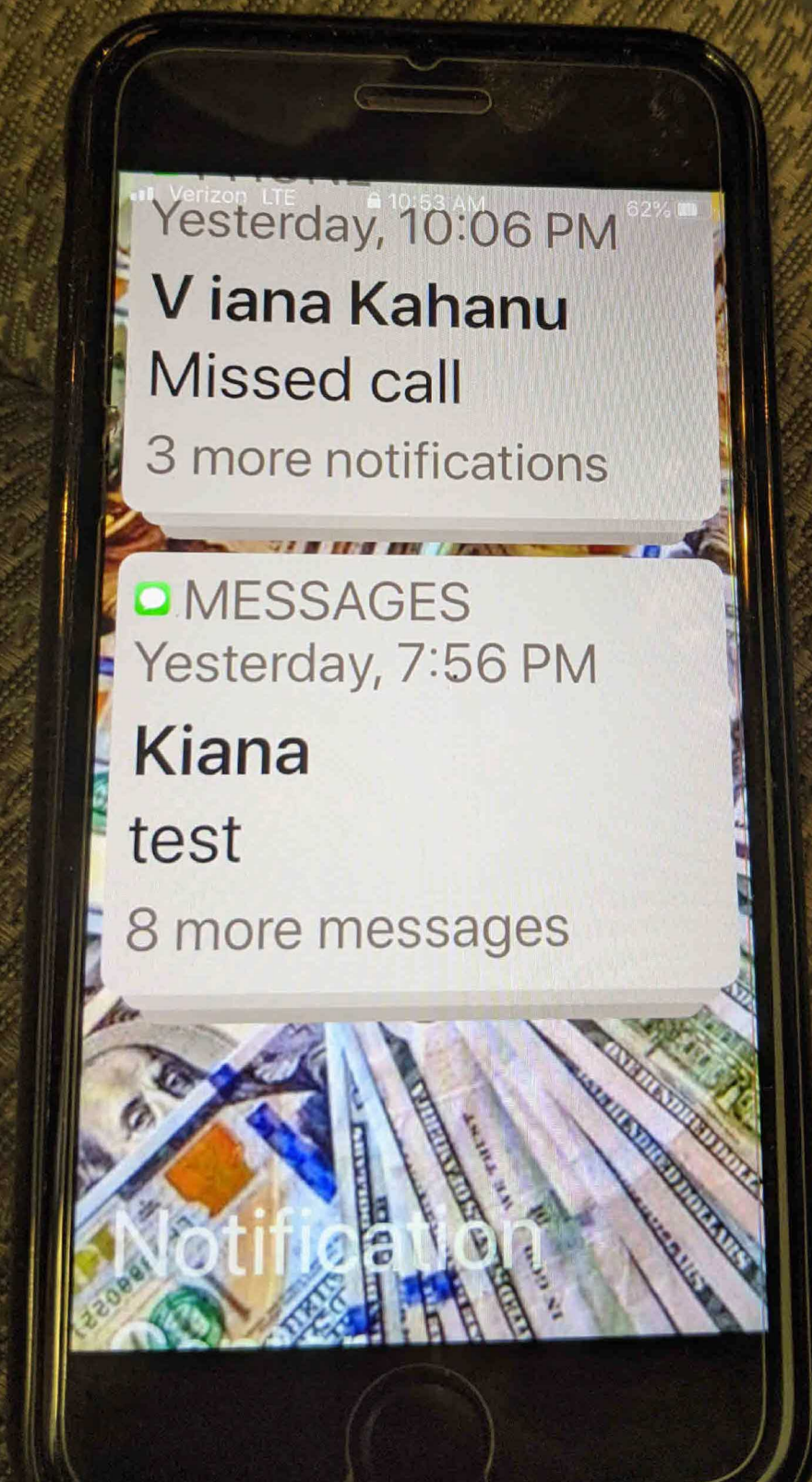
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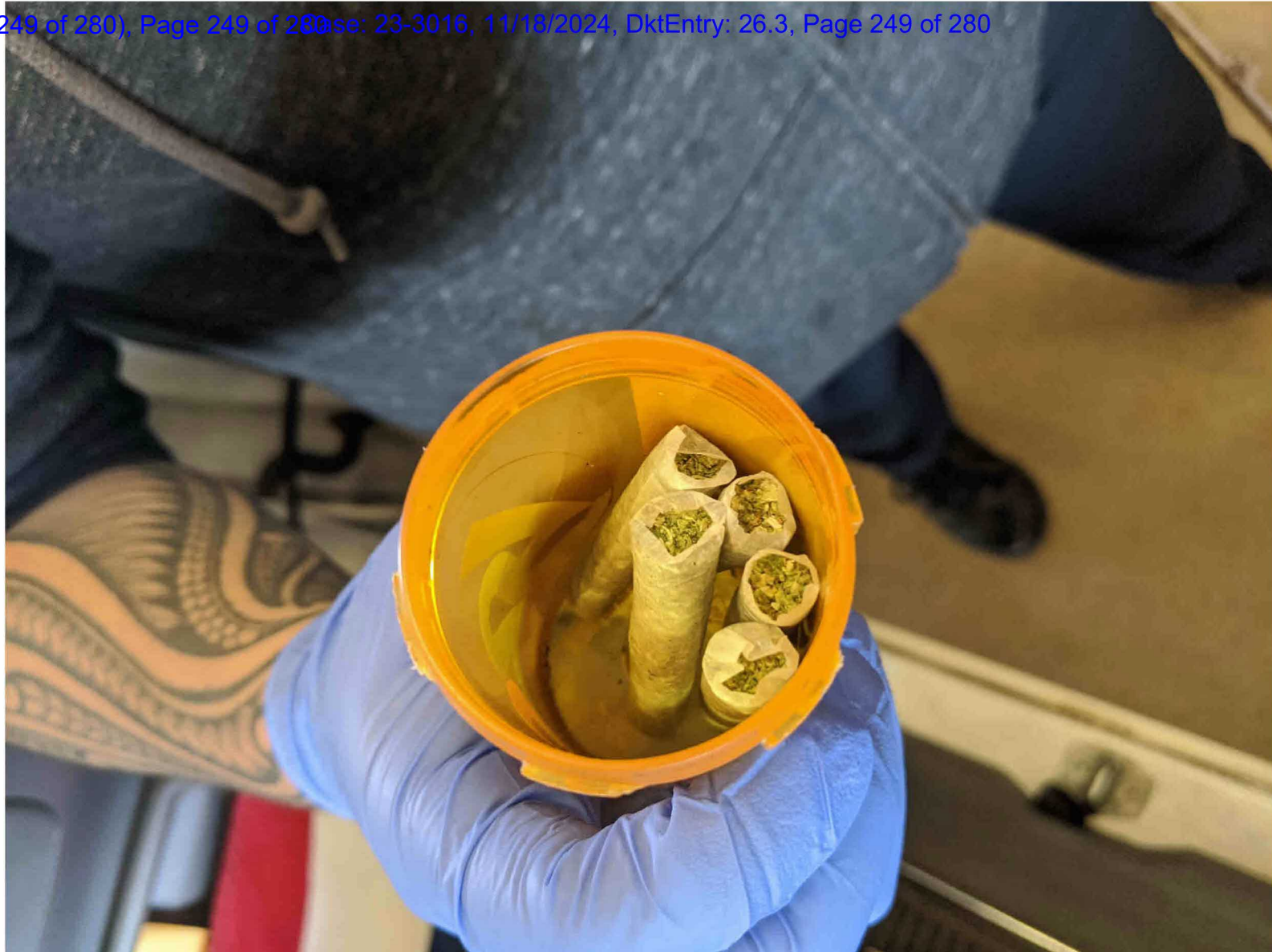


2-SER-455











2-SER-458







## State of Hawaii 329 Medical Cannabis



Registration Number: 2019032769

Start Date: 02/01/2020 Expiration Date: 01/31/2022

Patient Last Name: Cummings

First, Middle, Suffix: Lyle R

Date of Birth: 08/09/1973

Caregiver Last Name:

First, Middle, Suffix:

Date of Birth:

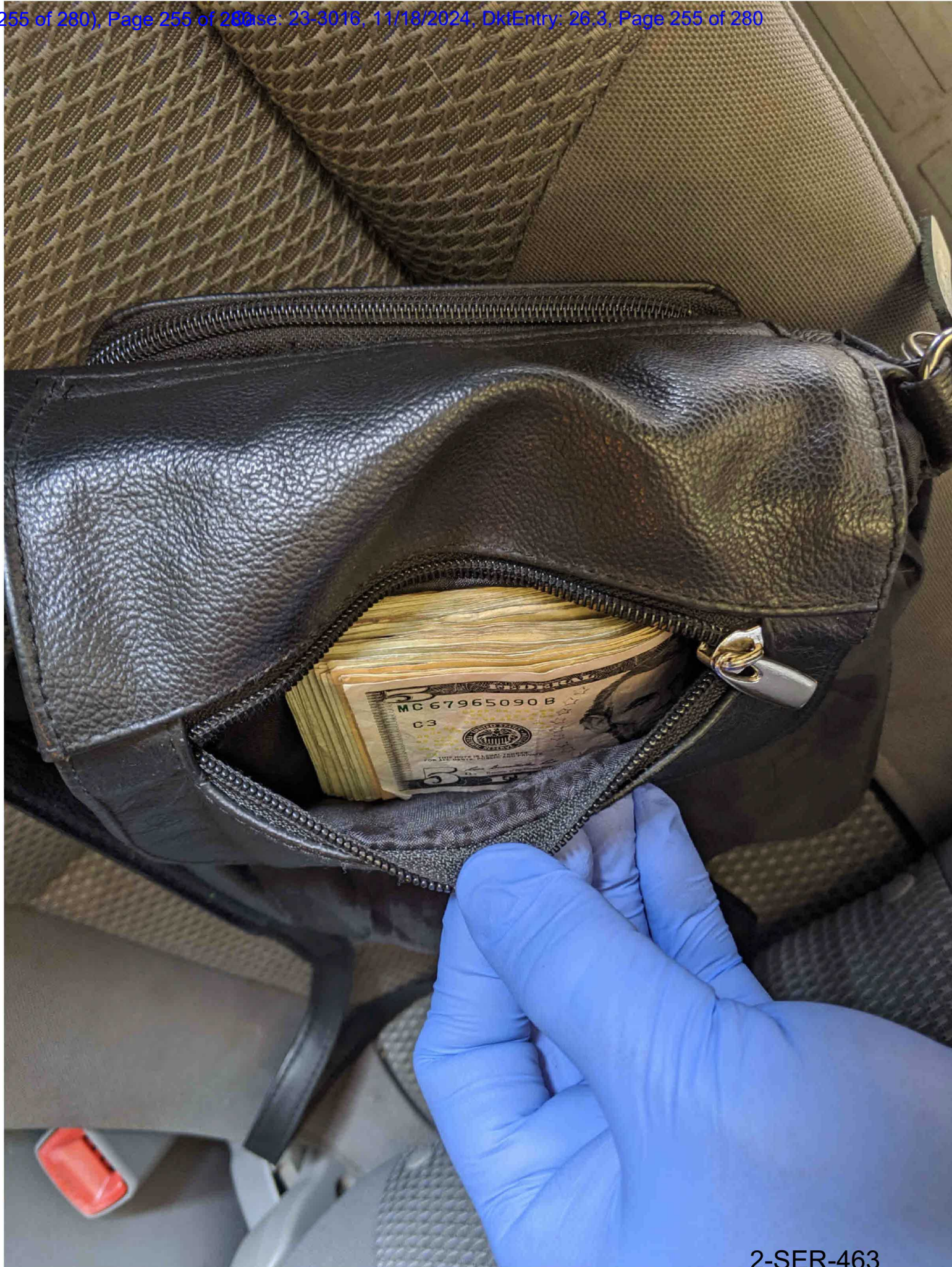
Physician/APRN Name: /s/ Robert Mastroianni, MD











2-SER-463

CUMMINGS\_000127





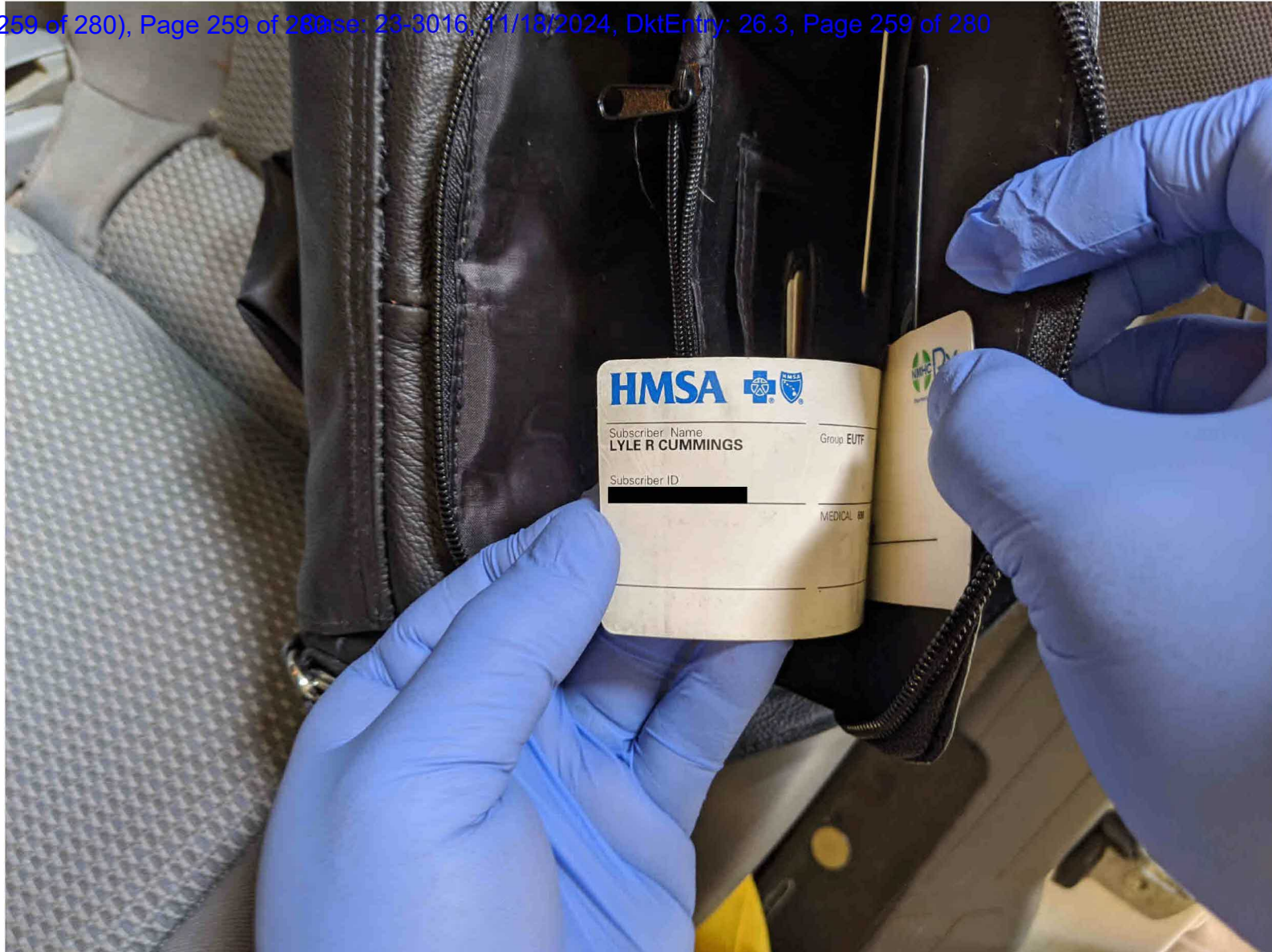














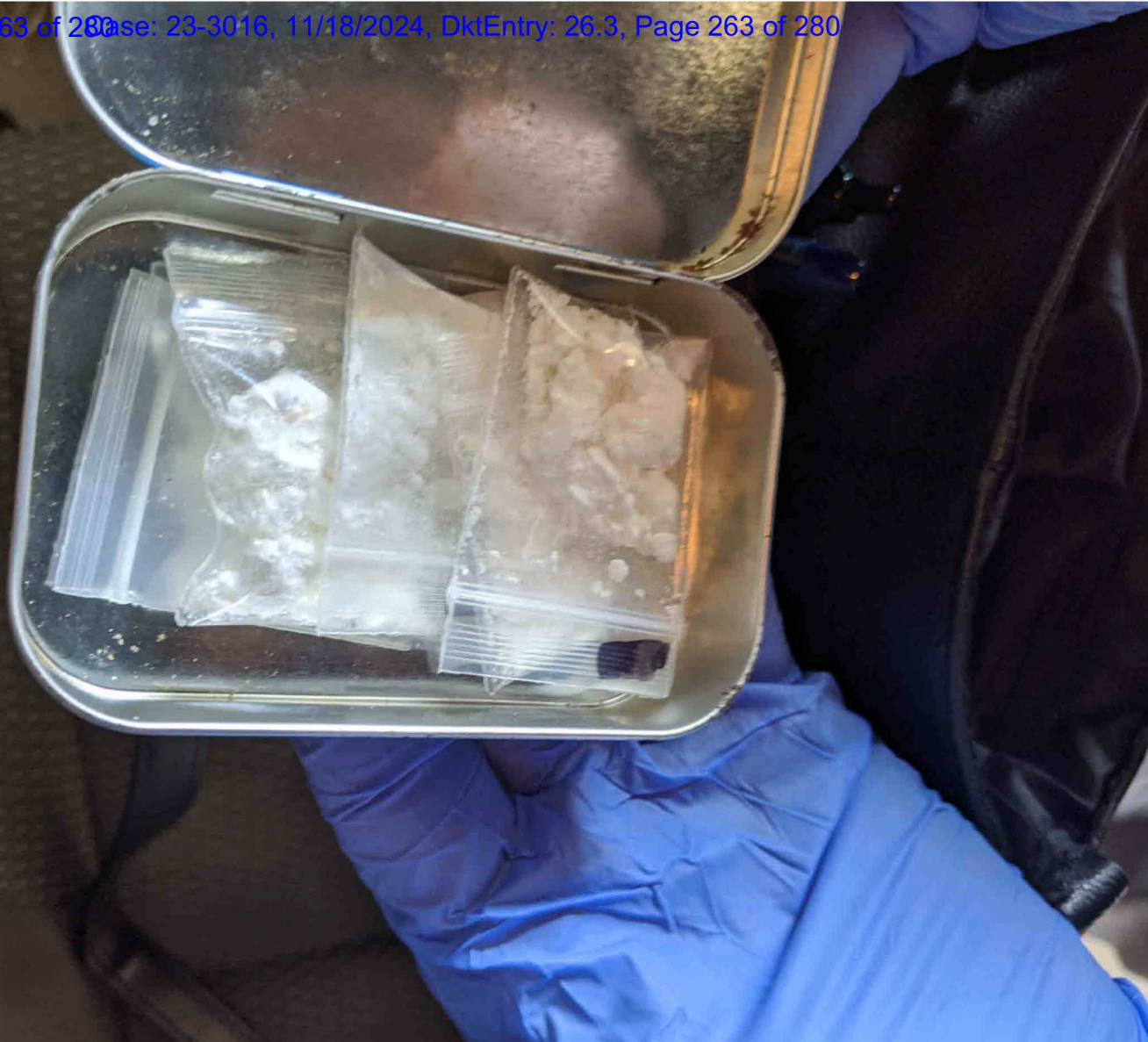






















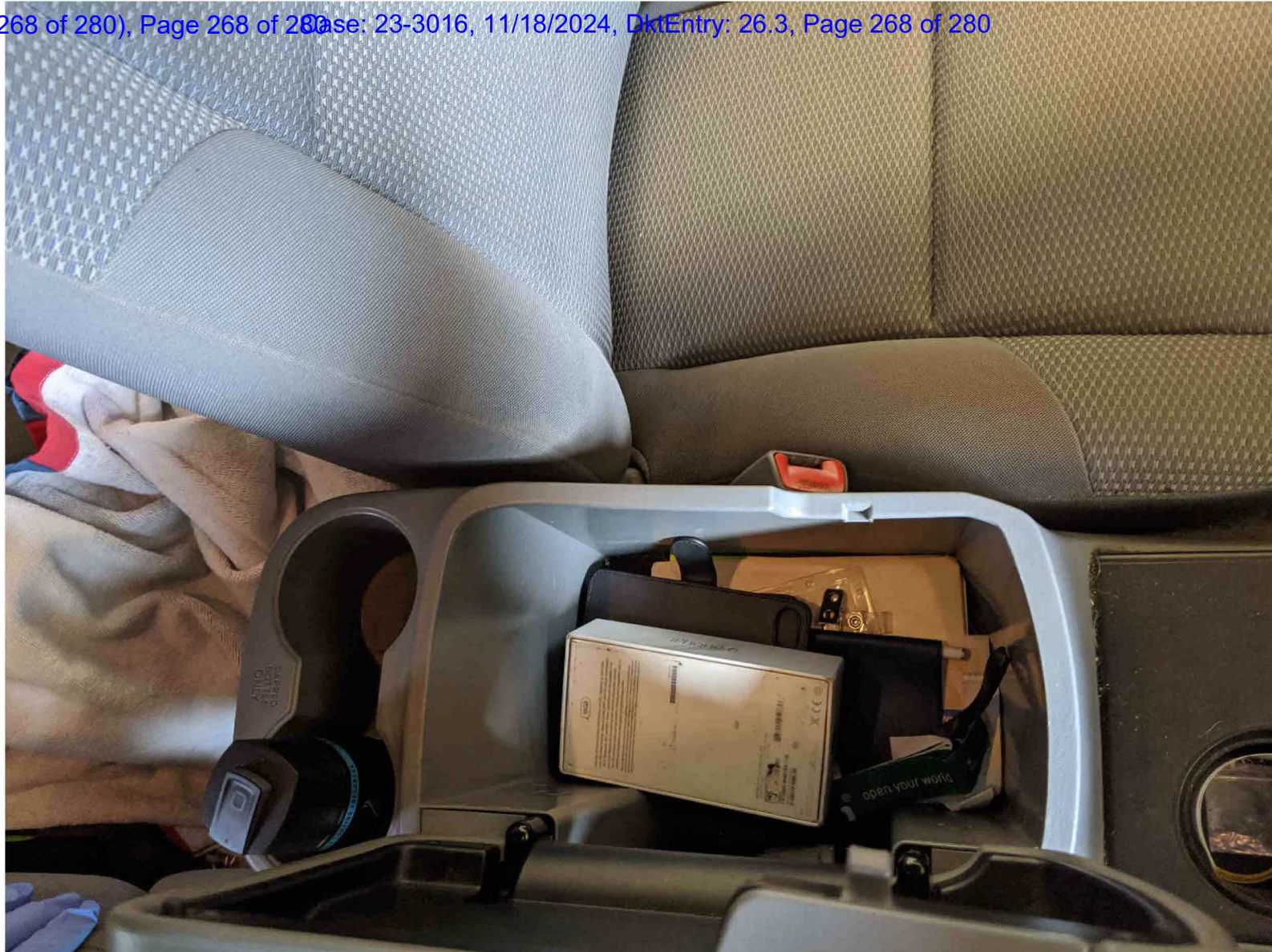






2-SER-475













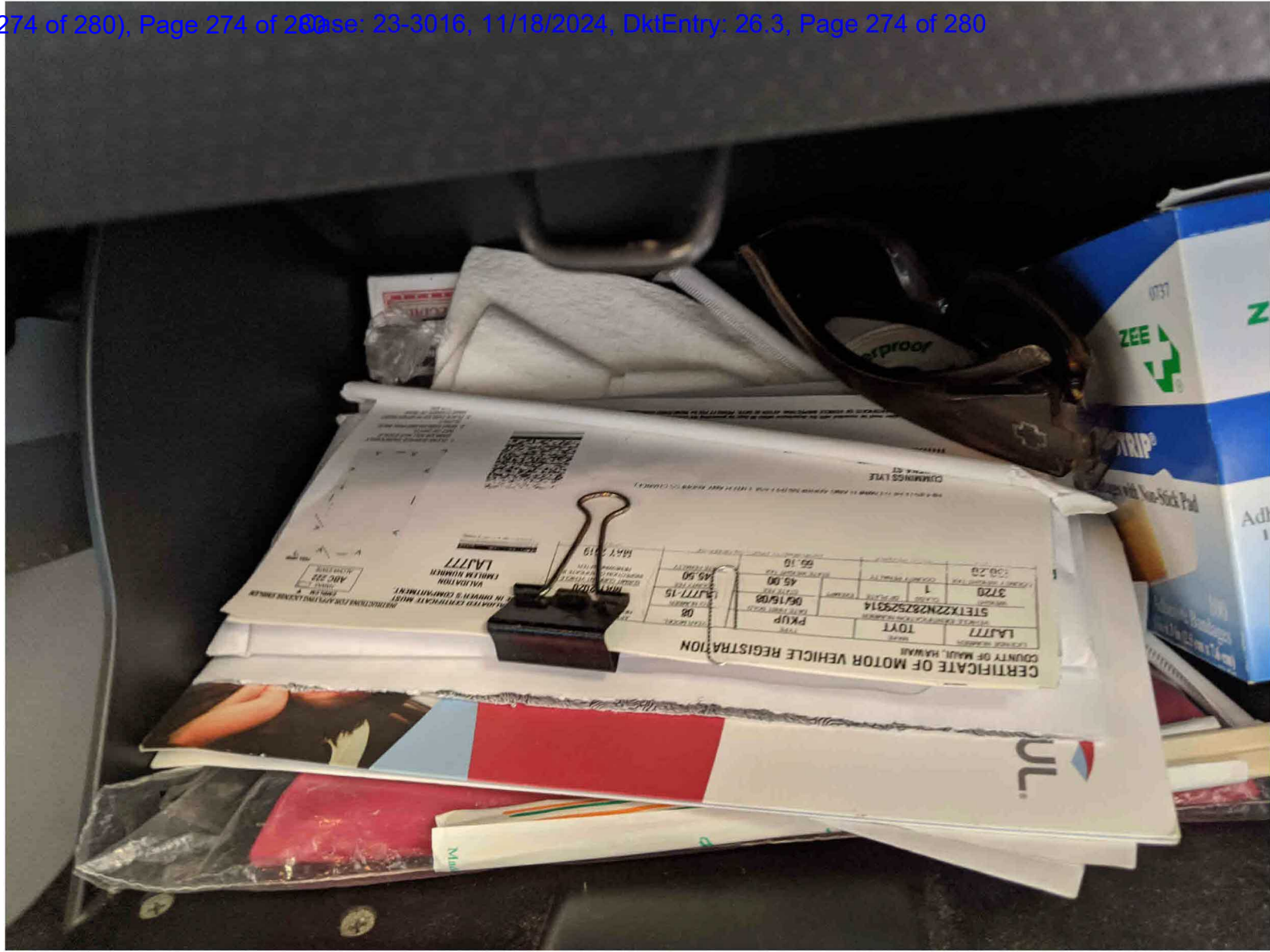














# CERTIFICATE OF MOTOR VEHICLE REGISTRATION COUNTY OF MAUI, HAWAII

LICENSE NUMBER <b>LAJ777</b>		MAKE <b>TOYT</b>		TYPE <b>PKUP</b>		YEAR MODEL <b>08</b>	
VEHICLE IDENTIFICATION NUMBER <b>5TETX22N28Z529314</b>				DATE FIRST SOLD <b>06/16/08</b>		TCI NUMBER <b>LAJ777-15</b>	
WEIGHT <b>3720</b>		CLASS <b>1</b>		SP PLATE <b>EXEMPT</b>		STATE FEE <b>45.00</b>	
COUNTY WEIGHT TAX <b>150.20</b>		COUNTY PENALTY		STATE WEIGHT TAX <b>65.10</b>		COUNTY FEE <b>45.50</b>	
				STATE PENALTY			

AFTER PAYMENT OF FEES,  
REGISTRATION EXPIRES ON  
THE LAST DAY OF:  
**MAY 2020**  
SUBMIT CURRENT VEHICLE  
INSPECTION CERTIFICATE IF  
RENEWING AFTER:  
**MAY 2019**

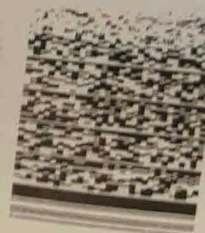
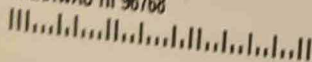
INSTRUCTIONS FOR APPLYING LI  
VALIDATED CERTIFICATE MUST  
BE IN DRIVER'S COMPARTMENT.

VALIDATION  
EMBLEM NUMBER  
**LAJ777**

EMBLEM  
HAWAII ☐  
**ABC 222**  
ALOHA STATE

REGISTERED OWNER AND ADDRESS (PLEASE ENTER ANY ADDRESS CHANGE):

**CUMMINGS LYLE**  
**24 NENA ST**  
**MAKAWAO HI 96768**



Any change of Registration Owner or Lienholder must be recorded with the department within 30 days by presenting the  
CERTIFICATE OF REGISTRATION and current CERTIFICATE OF VEHICLE INSPECTION. AFTER 30 DAYS, PENALTY FOR  
OF TITLE properly endorsed, last issued  
OWNERSHIP WILL BE \$50.00.

1. CLEAN SURFACE THOROUGHLY (EMBLEM WILL NOT STICK IF WET OR DIRTY).
2. BEND EMBLEM AND PEEL IT SLOWLY.
3. PLACE EMBLEM IN UPPER RIGHT HAND CORNER OF REAR LICENSE PLATE.





2-SER-484

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI'I

UNITED STATES OF AMERICA,

Plaintiff,

vs.

LYLE RIKIO CUMMINGS,

Defendant.

CRIMINAL NO. 22-00023 DKW

**FINAL JURY INSTRUCTIONS**



## INSTRUCTION NO. 18

In Count 1 of the Indictment, the defendant, Lyle Rikio Cummings, is charged with Coercion and Enticement of a Minor in violation of Section 2422(b) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove beyond a reasonable doubt:

First, that between March 13-15, 2020, the defendant knowingly attempted to persuade, induce, entice, or coerce a minor, that is, an individual under the age of 18, to engage in unlawful sexual activity, for which the defendant could be charged with an offense under Hawai‘i Revised Statutes, Section 707-730(1)(b), Sexual Assault in the First Degree;

Second, the defendant used a means or facility of interstate or foreign commerce to do so;

Third, the defendant believed that the individual he attempted to persuade, induce, entice, or coerce was under the age of 18; and

Fourth, the defendant did something that was a substantial step toward committing the crime and that strongly corroborated the defendant’s intent to commit the crime.

Mere preparation is not a substantial step toward committing the crime. To constitute a substantial step, a defendant’s act or actions must unequivocally



demonstrate that the charged crime, that is, coercion or enticement of a minor, will take place unless interrupted by independent circumstances.

Jurors do not need to agree unanimously as to which particular act or actions constituted a substantial step toward the commission of a crime.

As a matter of law, Sexual Assault in the First Degree in violation of Hawai‘i Revised Statutes, Section 707-730(1)(b), a felony, provides that: A person commits the offense of sexual assault in the first degree if the person knowingly engages in sexual penetration with another person who is less than fourteen years old.

“Sexual penetration” means: (1) Vaginal intercourse, anal intercourse, fellatio, deviate sexual intercourse, or any intrusion of any part of a person’s body or of any object into the genital or anal opening of another person’s body; it occurs upon any penetration, however slight, but emission is not required; or (2) oral sex, including cunnilingus or anilingus, whether or not actual penetration has occurred.

An actual minor victim is not required for an attempt conviction under Section 2422(b) of Title 18 of the United States Code.

The internet and a cellular phone are facilities of interstate commerce.

INSTRUCTION NO. 20

A minor's willingness to engage in sexual activity, or stated consent to sexual activity, is irrelevant to the elements of 18 U.S.C. § 2422(b) (Coercion and Enticement of a Minor) and Hawai'i Revised Statutes Section 707-730(1)(b). The relevant inquiry is the conduct of the defendant, not of the minor.